Supreme Court, U.S.
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(4)

No. 85-530

IN THE SUPREME COURT
OF THE UNITED STATES

October Term, 1985

Dennis M. O'Connor, et al.,
Petitioners,

vs.

Magno J. Ortega,
Respondent

On Writ of Certiorari
to the United States
Courts of Appeal for
the Ninth Circuit

APPENDIX FOR RESPONDENT

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BEST AVAILABLE COPY

20 pp

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

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132/VII:443 (r. 56): What did happen?
134/VII:523 (r. 37): What will happen?

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2/[Sexual Harassment Policy due June 15, 1981: ex post facto.]

6/[Under G.C. Sec. 14780, no further approval is necessary.]

13/G.C. Sec. 18714, 18703, Ex. 13a, SPB Rule 540, 540.2, 540.3

14/Skelly Hearing 16/Ex. xv-J

19/Exhibit E, BRYANT v. SPB, 1950, 96 CA 2d 423, 215 P 2d 512, SKELLY decision

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93/V:95 93/V:96

97/Ex. SS 118/SPB Rule368

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EXHIBITS

All had been designated for inclusion in the Joint Appendix. The copies from the court files from which the following and those in body, addendum and appendix of the brief had been excerpted have been submitted to the Court with letter of transmittal from the clerk of the Napa County Superior Court, whose administrative record was asked to be noticed by federal court at the behest of petitioners.

Ex. 1 (a. 15): Writer not employed:

"Sept. 4, 1981

"Dear Dr. O'Connor:

During my employment in the Prof. Library at the hospital I had some unpleasant contact with Dr. Ortega.

For the first nine months I saw little of him. . ."

[Temporary nine-month employment as student professional assistant was over

after respondent was dismissed by phone when additional charges were invited.]

Ex. 2 (a. 16): Intern not an employee:

"To Whom It May Concern:

"This letter is a 'statement regarding contact I had with Dr. Ortega as a social work intern during the academic year of 1978-79. . ."

[Sexual Harassment Policy invited from NAPA by June 15, 1981: ex post facto.]

Ex. 3a (r. 12): LOA changed to 6 months:

"I have NOT requested and/or authorized any leave of absence from my position due to family illness or obligations and in no way intend to be away from my job until January 8, 1982, which the form claims is my date of return."

s/Dr. Vaughn

Ex. 4 (r. 12): Dr. Ortega must void LOA:

"Return at an earlier date is only with the approval of the appointing power".

Ex. 7 (r. 14): Mrs. Owen quotes ex-con:

"felt the decision not to allow him to change his rotation period and work here during the month of July

was a way of reprimanding him.

". . .if we wanted any statement from him he would be glad to supply it. He indicated that he enjoyed the residency program, that he was getting good recommendations from other staff, and that he hoped to make a career in state service. The only part he disliked was the fact that Dr. Ortega used his position to press the residents in certain areas."

Ex. 10 (r. 46): Computer "disappears":

"8/17/81 1120 hrs - Officer to Professional Education to take report of missing property.

"Officer talked with Mrs. CIRAULO (RP) who stated she received a call from Dr. ORTEGA (S) this morning between 0800 and 0810 hrs. He wanted to know what appointments he had. He then advised her that he had the computer.

"The computer . . . is kept in Rm. 1363. It is made up of four units. . .

"It has an approximate value of $5,000.00

"It is unknown when ORTEGA came to the hospital and removed the computer. Itis believed it was sometime this weekend. (8/15 or 8/16)."

"RECOMMENDATIONS: R/O recommends this matter be turned over to the committee who are reviewing Dr. Ortega's department at this time, to determine if any criminal activity has occurred.

s/JBH/jgv/ml

Ex. 13a (r. 7): Approved subpurchases:

"Disk II IF (for faster correlation) $645
"BW Monitor (to relieve overcrowding) 240
"Applewriter (software, not a printer) 75"

Ex. 13b (r. 10): To link data bases:

MODEM and Timer (for access to USF, Stanford) $350"

Ex. 14 (r. 7): "Thank-you" to residents:

"April 13, 1981

"TO WHOM IT MAY CONCERN:

"I want to thank all who have contributed to the acquisition of the Apple Computer for the Professional Education Department of Napa State Hospital. It will be used exclusively for training of psychiatrists.

"Sincerely,

"s/D.M.O"

Appendix-5

Ex. 15a-1: "Forgotten" thank-you note:

"Apr. 13

Dear Mr. M:

"Thank you for your magnanimous donation of a printer and the associated hardware (total of $2,210.00) to the Professional Education Deprtment of Napa State Hospital.

"We share your hope that this will facilitate the dissemination of learning among all professionals.

"Sincerely,

"(Unsigned)"

Ex. 15a-2 (r. 5): $2000-printer donated

"April 4, 1981

"Dear Dr. Ortega,

"I am pleased to inform you that management have approved donation of a printer and the associated hardware for hook-up with your Apple computer to be used for education and research at the Napa State Hospital. We hope you will accept this donation as a small token of our willingness to participate in your program.

"The above equipment is covered by a 90-day warranty. If you have any question on this matter please don't

hesitate to call me.

"Sincerely,

"s/A. M."

[Apple has an agreement with California to introduce micro-computers state-wide for mutual benefit.]

Ex. 15b-3 (r. 7): 15a-1, but signed: "s/D.M.O."

Ex. 16a (r. 8): "Unprocessed" computer training contract.

Ex. 16b-1 (r. 9): Same as 16a but approved by Chief, Systems Review, Health and Welfare Agency.

Ex. 16b-2 (r. 8): "(E)ffective from date of such approval" (July 15, 1981, before respondent was placed on A.L.)

[Under G.C. Sec. 14780, no further approval is necessary.]

Ex. 17 (r. 27): Dr. Onne's photograph as a model.

Ex. 18 (r. 27): Valentine Card to rebut Dr. Sutton.

19 (r. 27): Classic love poems for "rebuttal"

[If a wrongly worded warning can save

criminals from any prosecution, surely wrongful acts can reverse dismissals.]

Ex. 21 (r. 11): vs. automatic dismissal:

"June 19, 1981

"To: Mrs. Owens, Personnel Officer

"From: Magno J. Ortega, M.D.

"Subject: Richard M. Vaughn, M.D.

"Dr. Vaughn requests delay of his next rotation and will be on Leave of Absence from July 1, 1981 until he reports at Highland Hospital.

"We will let you know when he reports there."

"s/M.J.O.

Ex. D (r. 5): Prior Feasibility Study:

"March 18, 1981

"Dear Magno:

"Here are the justifications and specifications for the APPLE system that I recommended for your training program. . .

"Note that the MODEM and Timer may best be purchased through the University. . . The Timer would allow carrying out on-line reaction time experiments and the Modem would allow you to address the University

computer center or any other of the various data nets that might interest you including, of course, the Libraries of Congress and NIH (e.g. Medlars) and so on.

". . . (I)t would allow residents to have hands-on experience with a computer. They would be able to learn Basic programming, compute simple statistics for themselves and have access to the computer center at the University of California for more elaborate and detailed multivaried statistics. . .

". . . It could, of course, very easily be totally usurped by people like library and clerical services since it also makes preparation of manuscripts and automated printing of letters very easy.

". . . I hope this is the sort of information that you want.

"With best personal regards,

"s/Noch"

Ex. D-1 (r. 9): Computer for training:

"Memorandum

"May 22, 1981

"Magno Ortega, M.D.

"Your contract for Professional Education's computer is being reviewed by Mr. Friday. I would ask

you to please make an appointment at your earliest convenience to see him and discuss this contract.

"s/D.M.O."

Ex. E (a. 19): A senior resident:

"A. Overtime Compensation. This allegation is completely out of focus and perspective. It fails to recognize . . . the active participation of the residents, in conference with Dr. Ortega, to seek ways and means of raising money to purchase a mini-computer. The(ir) interest . . . arose, in large part, from my work with similar computers under the direction and supervision of Dr. Enoch Callaway, Director of Research . . . University of California, SFO. This work was one day per week in January, February, and March of 1981, and was part of my residency in Psychiatry . . . This led to our conferences previously mentioned . . . It is not at all clear that Dr. Ortega violated any . . . policies or regulations since nothing was really done. . .

"C. Sub-paragraph 4 of this allegation states clearly, succinctly, and sufficiently all that needs to be said about this allegation: "4. The contract has not been approved and Mr. Saeedi has not been paid." I would ask then this simple question: Where and what is the evidence or substantiation for any punitive action when no one has

a basis for complaint? Is the State Mr. Saeedi's advocate for this action? . . .

"E. Deception. This entire allegation is patently absurd for a responsible executive director or administrator to present. It reflects as much upon the ineptness and inability of the executive to administer and to manage as it does upon the subordinate to present documents for consideration and signature.

Sub-paragraph E 1) states: This was done under the guise of an emergency and after you refused the Executive Director's order to go through the chain of command." Are we to believe that the Executive Director is unable to give cogent orders? Further, in this instance, what is the chain of command? (I believe it to be Director of Professional Education to Executive Director.) Again, as in previous allegations, the sub-purchase orders were never executed, no money was spent and nothing was purchased. (Now if you were fishing, your catch would have escaped because you attempted too early to pull the hook.)

"Next, we read in this allegation direct statements regarding Dr. Ortega's intentions with Dr. O'Connor to "deliberately mislead", "actively deceive" and to not follow NSH policy and procedure. Now, I

ask you, if Dr. O'Connor is fully aware of these policies and procedures, why did he not cause this interchange to come to a halt and why did he not counsel Dr. Ortega on his apparent, patent and even blatant disregard for these policies? It is apparent to me that Dr. O'Connor was a willing participant in this matter, neither misled nor deceived until some subordinate later brought this to his attention.

"Paragraph F 1) alleges that Dr. Ortega removed the computer and printer from NSH on August 15-16, 1981, without authorization and took them to his home. Ownership of this equipment has not been established; therefore it seems ludicrous to allege that authorization is needed for one person to remove personal property from one place to another. It does not belong to NSH or to the State of California; it does not belong to any indivdual who has filed a law enforcement or legal complaint and there appears to be no valid reason for accusing Dr. Ortega of anything.

"G. Leave of Absence . . . One thing is clear through personnel policy and Dr. Ortega's previous actions: Dr. O did have the basic authority to place the medical resident on a leave of absence . . . I do not understand nor are here given any explanation of why it became necessary for someone to (a)void a leg-

itimate, duly authorized Leave of Absence "in order to honor the State's obligation to an employee". This smacks again of administrative incompetence and a real failure of the executive director to support a department head. Furthermore, it is not at all clear what "inappropriate personnel practices" were carried out by Dr. O. . . .

"I. Sexual Harassment of Female Resident. This allegation is nearly unbelievable in California . . . To allege misconduct of an American citizen ten or more years after the alleged misconduct is so ludicrous, so far out of the bounds of common law as to be unworthy of addressing by this hearing . . . Do we ask why no other similar incidents are mentioned? . . . Or do we question why this lady has continued a close professional relationship on the staff of the Department of Professional Education in the light of her serious allegation?

"STANDARDS: . . . He is uniquely incisive, stimulating, challenging, and especially is he personally professional. For each resident trainee Dr. O applies himself to assure the best possible training program. In no other residency program with which I am familiar is the Professor so intimately involved, so fully committed to the training of his residents . . .

"This hearing has, in our view, no

other recourse than to reverse the improper dismissal of Dr. O. and to reinstate him . . ."

Ex. G (a. 40): DUE PROCESS VIOLATIONS:

"The Personnel Board Rules were promulgated under mandate of Government Code Sec. 1874:

"(a) Nothing in this part shall preclude the board from providing by rule for a system of adjusting employee grievances which SHALL be administered WITHIN the department BEFORE recourse to any remedy provided in this part (which includes:

(Sec. 18073. The board shall provide for dismissals, demotions, suspensions and other punitive action for or in the State civil service in accordance with Article XXIV of the Constitution and this part.)

"THUS, VIOLATIONS THEREOF VIOLATE MORE THAN THE RULES:

a. SPB Rule 540. A grievance exists whenever an employee believes that he/she has in any manner been adversely affected in employment by an action or failure of action by the appointing power, a supervisor, or another employee.

"540.2 PURPOSE AND OBJECTIVES . . . Every reasonable effort should be made intially by the employee concerned and the employee's immediate

supervisor to resolve the grievance informally. If such efforts do not produce a solution, the objectives in following the more formal procedure are first to establish what the facts of the situation are and then to arrive at an appropriate solution under these facts rather than dealing in personalities . . . at as early a stage in the procedure as practicable, BY SOMEONE NOT INVOLVED IN THE IMMEDIATE SITUATION or direct line of supervision.

540.3 SCOPE . . . Employees SHOULD be encouraged to use the less formalized grievance procedure unless they BELIEVE this procedure will not afford them adequate consideration of their grievance.

[This is the justification for the Skelly Hearing: if the aggrieved is the supervisor, he must have all the materials on which his grievance is based for the supervisee to explain away and only if the conflict cannot be resolved informally may the supervisor, at his discretion, decide on formal disciplinary action.]

Ex. H (r. 28): Superior Court Order:

"Judge Hon. PHILIP A. CHAMPLIN, Dept. One, 11/2/81

"MAGNO J. ORTEGA, M.D., Petitioner, In Pro Per

"D. M. O'CONNOR, M.D., Respondent, ASHER RUBIN, Deputy Attorney General

"ORDER TO SHOW CAUSE FOR STAY ORDER: COURT NO. 43403

"MOTION TO PRODUCE:

"After hearing arguments of counsel and the matter having been submitted, the Court orders that the Motion to Produce be granted as follows:

"1. That copies of all sub-purchase orders be furnished to Petitioner;

"2. That Petitioner be furnished any statements taken relating to persons in connection with the investigation;

"3. That Petitioner be furnished any rebuttal documents to Dr. Sutton's statement.

"The Court further orders that the stay be denied provided the Attorney General complies with the discovery order.

[Can denial of stay still be vacated since the Attorney General did not

comply with the discovery order?]

Ex. J (6): vs. charge of false deadline:

"DEPOSITIONS and STATEMENTS
by NAPA EXECUTIVE DIRECTORS:

"What is the significance in state operations of April 15?

"Dr. Linn: It is the last day of the fiscal year for purchasing equipment.

"Dr. Spratt: It's the date that budget requests for the next fiscal year must be submitted to the Department.

"Dr. O'Connor: I'm not sure (on the witness stand)."

[For other summarized disagreements, see Exhibit xv-J.]

Ex. L (r. 22): BEFORE the hearing:

"The Superior Court
"Napa County, Calif

"Your Honor,

"I received a strange telephone warning today that I might be arrested like another doctor was this week. . .

"What makes me suspicious is that I got a hearing date three months ahead of the on-going schedule:

within a month, almost to the day, that I received notice of punitive action, unless I resign.

. . .

"And I can't get a continuance of hearing except for good cause if I am under arrest.

"Hence this anticipatory writ for habeas corpus, if this is permissible.

"Sincerely yours,

"s/M.J.O.

"2 October 1981"

Ex. M (r. 24): Biased Hearing Officer:

"To Whom It May Concern:

"This is what I heard the hearing officer, Mr. Waller, say before the hearing on Oct. 29, 1981, started:

"'Oh - We have what we need here, this won't take long . . .' etc., etc.

"Signed under penalty of perjury."

Ex. N (r. 21): Denied grievance channel:

"This is a true copy of my plea to SPB for informal hearing by law of prior grievances before the Secretary of Health:

"AN APPEAL

"I WAS UNJUSTLY DEPRIVED OF MY JOB, A JOB WHICH I THOROUGHLY ENJOYED WITHOUT BEING ABLE TO SAY:

"I don't know what the charges are -- I don't think anything came out that I would consider a charge. . .

"I thought I had satisfied every question they brought up. . .

"I am at a loss to go into detail.

"There was no evidence raised. . .

"The fact is, I even offered my resignation that first day. . .

"I understand the Secretary is a reasonable man. Is it possible for you to make an appointment for me to see him?

"I DON'T EVEN KNOW IF SAYING ANY OF THESE WOULD HAVE MADE A DIFFERENCE AT ALL NOW!

"s/M.J.O.

"31 Aug. 81"

Ex. O (r. 60): DEMURRER (Pres., S.P.B.):

"To Dr. O'Connor, delivered October 28, 1981:

"'Granting that all you say in your complaint is true, you still have no legal claim against me, because we are in the wrong court, (or) the complaint just does not

state facts sufficient to constitute a cause of action, (or) there is a wrongful misjoinder of parties or causes of action.' (Cf. Exhibit E.)

"Bryant v. SPB, 1950, 96 CA 2d 423, 215 P 2d 512: 'If notice is required, the complaint must state sufficient facts to show that the accused committed some type of prohibited conduct.' (The 'accused' in this landmark case was not even a 'permanent' employee.)

[The Skelly decision recognizes the property interest of permanent employees in tenured employment.]

Ex. P (r. 23): "Rebutted" by souvenirs:

"October 23, 1981

"Hearing Office Section
"State Personnel Board

"Dear Sirs:

"Dr. Ortega has organized and directed an outstanding psychiatric residency training program that has produced many extremely qualified psychiatrists who now staff Dept. of Health and Dept. of Corrections institutions. . . The quality of training given has enabled the graduates to treat the most difficult patients and to assume positions of leadership within the Departments. . . Finally, the rate of

passage of specialty board examinations of the graduates has been excellent and has exceeded the rate of most other residency programs. . . (I)t is totally inappropriate to fire him on the basis of the charges presented(:) . . .

"1) Allegations concerning the computer. I feel that it is not improper for residents or other employees to donate money to purchase equipment that they would like to use in their work or training which the state cannot provide. . . Furthermore it is always possible to disagree or refuse his suggestions.

"2) Payment of consultant to train residents on the usage of computer. For at least the last ten years all consultants have been paid for a full days salary when they come to give a guest presentation. . . Many times travel expenses would far exceed the amount they are paid in the customary fashion. . . Dr. O'Connor and other hospital administrators have been well aware of this practice for many years.

"3) Allegation that Dr. Ortega 'took home state property'. . . In the first place, Dr. Ortega's home has been regularly used by residents as an off-campus training site for at least ten years. . . Dr. Ortega designed the architecture of his home in order to facilitate group meetings and other training sessions.

"4) It is alleged that Dr. Ortega deceived Dr. O'Connor into signing hospital requisitions to purchase minor parts for the computer. I feel it is Dr. O'Connor's responsibility as an administrator to review materials before he signs them.

"5) Charges of sexual harassment. . . In these ten years I have never heard of any incidents of 'sexual harassment'.

"In summary. . .These irregularities that may exist are relatively minor when you consider the overall performance of Dr. Ortega and in no way justify the decision to dismiss him.

"I hereby certify under penalty of perjury, etc."

"s/Dr. Sutton

Ex. T-2 (r. 19): Chief Resident noted:

"Fr, 31 July 81:

"When we got to the hospital, we found Mr. Friday talking to the secretaries and we were soon told that Dr. Ortega's office was locked, the locks were changed, and that Dr. Ortega had been asked to take a vacation. . .

"Mo, 3 Aug:

". . . The meeting was requested

by Dr. O'Connor to tell us what was going on. He was sorry for the investigation but it was the first time that two people had complained, in writing, and he was obliged to look into it.

"He was very positive nothing would change and he spoke very fondly and highly of Dr. Ortega. He related, at length, his own application to Napa State Hospital and choice of the program in spite of having been accepted by many other reputable programs in the country. It was Dr. Ortega's creative approach that had attracted him to the program. He also spoke about his problems with Dr. Ortega when he did not want to go to Mt. Zion Hospital, but during his Board examination had been grateful to Dr. Ortega for making him go to Mt. Zion.

"He was so positive that all would be well . . . but got Dr. Vaughn (or Dick as Dr. O'Connor called him) sufficiently worried to make him ask about possible retaliation when Dr. Ortega returned. Dr. O'Connor reassured him by saying that Dr. Ortega was not that type of person.

"Fr, 7 Aug:

". . . I was asked questions about . . . the difficulties I had with Dr. Ortega. I remember feeling rather angry during the week-end that followed at the way the inter-

view had concentrated only on the negative events. . .

"Week-end of 15-16 Aug:

"The computer 'disappeared' and as a result we were told that his vacation had been made 'indefinite'.

"Tu, 1 Sep:

"Before the 10:30 A.M. conference, Dr. Brannick said that he had an announcement to make. He said that he had been instructed by Dr. O'Connor to inform us that Dr. O'Connor had decided to dismiss Dr. Ortega. Dr. O'Connor wanted us to hear of the news before it was announced to the rest of the physicians at the Medical Staff Meeting on Wednesday afternoon, the 2nd of Sept.

"The shock of the news and the discussion that followed led tothe cancellation of the case conference that morning. We tried to meet with Dr. O'Connor but he was not available -- in spite of the fact that he knew that Tuesday was the only day when all the residents were at Napa. Therefore a letter was drafted to Dr. O'Connor and was hand-delivered. . .

"We, 2 Sep:

"Dr. O'Connor agreed to meet with us for a "brief" period in the afternoon before the Medical Staff Meeting but the meeting lasted for

1-1/2 hours.

". . . To the question "Why now" he said . . . because of written information he had received some six weeks ago. He had received simultaneously in writing two separate issues from two separate people about two separate people. . .

"Dr. M. asked if Dr. Ortega was investigated for the two allegations only.

"I had commented that it had looked like his whole life had been investigated.

"Dr. O'Connor then said that Dr. Ortega had offered his resignation but that Dr. O'Connor would not accept it. Instead, Dr. Ortega would go on vacation and they would investigate him while he was away.

"Dr. O'Connor then said that on Friday last (August 14th), Dr. O'Connor had agreed to accept the resignation but Dr. Ortega had refused to resign and therefore Dr. Ortega had to be dismissed.

"Dr. S. asked if he would find a new Chief who is as creative and one who would be able to maintain all the affiliations that our program now enjoyed.

"Dr. O'Connor said that he could not promise some quite as creative but that he would look all over the

U.S.A. if necessary to get the best replacement and that he would always be there to take care of our interest.

"Whereupon Dr. P. asked Dr. O'Connor that he was promising all this but would he still be there to keep his promise.

"Dr. O'Connor assured her that he would still be there unless a resident decided to stay there for 20 years.

"He informed us that we may see Dr. Ortega informally and that he hoped that he too would be able to see Dr. Ortega.

". . . He had serious charges against Dr. Ortega and that even if Dr. Ortega went to the Supreme Court and won, he would never be able to come back to Professional Education.

"Then Dr. C. asked about Dr. Ortega's pension rights and we were told that a person loses all pension rights when he is fired.

"s/A.G."

Ex. T-3 (r. 18): Senior Resident noted:

"1. Dr. O'Connor mentioned that complainer (?) had stipulated in letter that if Administrator of NSH would not look into his complaint the State investigators would be called in. . .

"(S)aying that it was customary . . . to put the program directors on administrative leave. To some extent he speculated that investigators would not be inhibited in doing their job."

[Another choice between not using "insiders" to investigate or violating G.C. Sec. 19574.5.]

". . . He solicited our cooperation in the investigative procedures. . .

"Mr. Stratton: 'Is it a common practice among Filipinos to call one another aunts and uncles even if they are not relatives?'

". . . I felt very uncomfortable then. If this was an investigation and if I had a lawyer then, would he have allowed me to go through further interrogation? I question the partiality of the investigators at this point. . .

"There were side-comments about attracting the residents into buying the computer by promising compensation time if they work on it on a holiday and the expectation to be reimbursed. Dr. Laskay commented that it appeared as if it was being given as a gift when it was not.

"There were no questions on sexual

harassment as warned by Dr. Vaughn would be one of the issues to be investigated. Dr. Vaughn brought this up after the first meeting with Dr. O'Connor.

"9-2-81

"The residents brought up uncomfortable feelings generated during the interrogation by the investigation committee. We learned from Dr. O'Connor himself that the issue about Dr. Laskay attempting to interview Dr. Metcalf was not documented in the committe's report to Dr. O'Connor. Neither was it documented that I was asked a racial question.

[It is natural not to try to incriminate one's self. Since these excerpts leave the rest to the imagination, it must pass the test used in making a summary judgments, which deliberately errs towards maximum leniency towards the party against whom the judgment is sought without going through trial by ordeal.]

"The general feeling was that it was a biased investigation but Dr. O'Connor responded that it was not.

The credibility of an allegation of sexual harassment which occurred years ago was questioned.

"Complimentary statements about Dr. Ortega as a unique and competent chief were brought up by the residents. . .

"I asked Dr. O'Connor whether the memorandum still holds about residents not being allowed to contact Dr. Ortega officially or unofficially was still binding. He said that Dr. Ortega was no longer officially connected with NSH and that the residents should feel free to contact him. He said he would call Dr. Ortega himself one day.

"I also asked Dr. O'Connor if the residents were still expected to produce the checks and "thank-you" letters or else expect administrative action for insubordination. Mrs. Owens stated that we did not have to, unless there was a court order to do so.

[Being sued for fraud is still being held over Dr. Ortega's head for plea-bargaining purposes.]

". . . Dr. O'Connor reassured the residents that UC Davis wouldn't take over the NSH program and that he'll always try to protect the interests of the residents.

". . . Dr. Metcalf, one of the faculty, . . . brought up the fact that he had been called by one of the investigators who asked him -- Tell me all the bad things you know about Dr. Ortega. He said this made him very angry and upset and that he could (not) have asked it in a less subtle way.

"I declare under perjury that the foregoing is true and correct.

"s/"(Cf. Ex. ZZ, Argument "1-c")

U-2 (a. 19): MISSING FROM TESTIMONY:

(18)108: ". . . Both chiefs of residents before and after my dismissal attended a physician's union meeting which questioned whether I should be represented against the hospital whose executive director was rumored to be a part of the bargaining team. . . And the agenda of that meeting (Exhibit CC) I now introduce as evidence of violation of code provisions on legitimate representation of public employees.

G.C. Sec. 3528. Employment organizations shall have the right to represent their members in their employment relations, including grievances, with the state. . .

Ex. Z (a. 15, 16): COMPLAINT PROCEDURES:

"Time limits defined in these sections shall be adhered to unless a mutual WRITTEN agreement exists bet-

ween the aggrieved person and the appropriate reviewers.

[No such written agreement was discovered even after court ordered that all investigative notes be produced. Counsel for Napa acknowledged [I:122] not having sent this document before petition for discovery was granted.]

". . . The initial contact with the counselor must be:

"(1) Within 30 days of the alleged discriminatory action or decision affecting the employee(s); or

"(2) Within 30 days of such action or decision having come to the attention of the employee. . ."

Ex. CC: STATE EMPLOYED PHYSICIANS ASSOCIATION BOARD OF DIRECTORS MEETING, Saturday, Sept. 19, 1981: (8) New Business (d) Defense of management as members (this item discussed the longest).

Ex. JJ-2 (r. 26): Threat of scandal:

"Oct. 30, 1981

"Dear Dr. Ortega:

". . . (I)f you intend to

introduce that document we will be compelled to offer rebuttal evidence which is in our possession. . . In the interest of fairness, however, we are hereby informing you that we do have relevant evidence bearing on Dr. Sutton's credibility and we do intend to use it should it be necessary. . . Finally, if you do introduce the declaration of Dr. Sutton, please so inform us by telephone so that we can subpoena her for cross-examination.

"Very truly yours,

"s/Deputy Attorney General

[Surely if one can threaten to subpoena the innocent supporter of the accused, absence of confrontation with accusers without benefit of a single subpoena can dismiss all dismissals.]

Ex. JJ-3 (r. 28, 64): Subpoenas denied:

"9 November 1981

"Dear Mr. Waller

"Kindly inform Mr. Rubin that as head of the hearing office you have not received a copy of Dr. Joyce Sutton's statement, as he alleges in a letter to me, with copy to you.

"The following are the witnesses I

would like subpoenaed:

"Ms. Sharon Loris (civil rights specialist, Dep. of Dev. Serv.)

"Dr. O'Connor

"Witnesses I have not cross-examined before the court granted my petition for discovery.

From true copy of handwritten list (Exhibit xviii):

"Mr. Friday, Mrs. Owen and Heskett, Drs. Brannick, Jackson, Vaughn, Carnazzo, Gandhi, Hoheneck, Sutton

"Alice (hearing office secretary) has a handwritten list of all the names, which she kindly copied for me, and so does Mr. Rubin have one given him at court when the petition for discovery was heard.

"1 subpoena duces tecum for NSH personnel folders of parties and witnesses to this hearing. . .

[Mr. Rubin has free access to them.]

"I must again protest, as I did to the Executive Officer of the State Personnel Board, that delays in issuing subpoenas is detrimental to patients the doctors must inconvenience for purely procedural considerations. . .

"Their number will partly also

depend on the process of discovery which you assert the hearing itself is.

"Sincerely, despite overt disagreements,

"s/M.J.O.

Ex. SS (r. 21): Investigate conflicts?

"FOR YOUR INVESTIGATION

"TO : The Attorney General

"THRU: The Director of Mental Health (acting deputy director was on academic leave from UCD)

"FROM: Magno J. Ortega

"As Chief of Professional Education, I have served the State of California for a third of my life. During my tenure, at one-tenth less the cost at other centers, the alumni of our residency training program has consistently showed better than the national average pass rate for board certification in psychiatry. . . And from other sources than state taxes, we have a one-way vision room (for family therapy), a video studio and a computer to help us in psychiatric education and research. . .

"We had survived two surveys in tandem by a National Accreditation Board for Psychiatric Residency Training, which was prompted by the

past chairman of (a) neighboring university. . . Had the fine-toothed comb used by the hand-picked surveyor found us wanting, our residency training program would have been disaccredited and our funds up for grabs to compensate for our neighbor's lost federal funds and community-supported training in a sister state hospital.

"The pretext for the survey was that our residents have to commute to UCSF and SFGH. They overlooked that (UCD's) Sacramento General Hospital was further away. They made Highland Hospital and Mount Zion Hospital affiliations prime requirements, as well as (hospital) research. Research (did) need beefing up, even if the present (acting) university chairman's last two published papers were written jointly with two of our alumni.

"But now, oddly enough, we also have a tempest brewing in our teapot. The tempest, like hurricanes, has a name. It is called COERCION. Tempests have a way of throwing up dirty debris, and it is in this sense that I suggest investigation of the following. I hope it is not seen as washing dirty linen in public.

"I have worked well with all the medical directors for the past 17 years and until now, with all the clinical directors (before Mr. Donoviel) and business adminis-

trators (before Mr. Friday). Otherwise, I could not have accomplished more than prior and other educator-administrators in the civil service system. (Prior C.P.E. directed a joint Napa-Sonoma Hospital Residency Program.)

"Coercion No. 1 took the form of a Clinical Director's attempt, against the wishes of the new Medical Director (Dr. O'Connor), to exclude me from the Governor's briefing room when the doctors threatened strike action. He (Mr. Donoviel) asked me if I'd like to leave the briefing room to talk to him and I replied that we had nothing to talk about. . . At that meeting, I told the Governor that Asian resident trainees who had passed California licensure examinations but were not graduates of American medical schools were paid half the stipend of Caucasian doctors who had not taken those exams. He promised the inequity would be rectified and asked me to help qualify more doctors for state service. I have and the inequity disappeared by re-interpreting regulations (graduates of approved medical schools became applicants whom the state licensing examinations and I accepted from anywhere in the world).

"Coercion No. 2 shows the tip of the iceberg indirectly. The Business Manager (Mr. Friday) erased my name from the court-ordered parking space one night. A couple of years later,

when he thought the incident might have been forgotten, he handed me the spray paint can at a Christmas party. More recently, my car was given a parking ticket on a Sunday for stopping at the door to my office (in a separate wing from the hospital).

"Coercion No. 3 was when a non-Caucasian resident was refused quarters because she had a child. . . I put her up in my house 5 miles away until she could find lodgings in town. (The child was quiet as a mouse).

"(. . . Their fetish for silence backfired recently, when a tenant quietly died and was discovered only because odor assails the senses silently. . . No amount of management training can replace native talent for absurd decisions. . .)

"Coercion No. 4 was a joint effort by the Clinical Director and Business Manager during the Medical Director's absence. In the dead of night, they arranged for the copying machine to be moved to the furthest wing from the Professional Education Department. . .

"Coercion No. 5 was the Business Manager's refusal to honor contracts already approved in Sacramento (Cf. Exhibit 16b) and the purchase orders for accessory computer components already signed by the Medical

Director (Exhibits 13a,b).

"Coercion No. 6 was when the Business Manager insisted I not be allowed to finish a (Friday) case conference in order that the donation of the computer itself to the hospital can be further investigated.

[The special investigator assigned to Napa was going to be away on vacation by then, and the hospital can start the investigation itself. The Business Manager could not wait even that long and had the locks to my hospital office changed before office hours Friday morning.]

"I was alleged to have coerced contributors to donate towards the purchase of the computer. . . By my arousing their curiosity about a revolutionary tool in research instead of guilt over not having done more research, the residents contributed the equivalent of one to two days' pay on the understanding that if they spent holiday time laying their hands on the computer instead of patients, they would get compensatory time off, but not at the expense of their schedule,and subject to my approval. . .

"But I've perhaps opened my mouth once too often on learning that the hospital bus has dangerously thin tires and that replacement won't be forthcoming until Halloween. I suggested that the patient government will not hesitate to help out

if invited, even if the state does not mind delaying any outing to save the hospital from embarassment in case of accident. . .

"The Clinical Director had just reported attending a two-minute meeting of administrative echelons 400 miles from Napa. I hazarded that if the president of the patient government were invited, their pressing needs would be funded instead. An administrator (Mr. Friday's better respected assistant) agreed, and that was probably the last straw, for the Clinical Director (Mr. Donoviel) adjourned the meeting with 'Are there any other jollies?'

"I doubt with all my heart that Coercion Nos. 1 to 6 could have happened if I had been Caucasian. . . None profited patient or hospital. . . And the name of the game may be Conflict of Interest. . .

"s/M.J.O.

"28 Aug 81"

Ex. CCC (r. 14): Final Query (not plea):

"In Mississipi, blacks who register to vote were arrested for reckless driving through stop signs when none existed.

"Is Rule 131 that does not apply to any doctor the Napa version of a stop sign?"

"Must the hearing officer recommend the personnel officer for a reprimand for inefficiency and incompetence in citing the wrong rule in its notice of punitive action? Or for negligence with malice aforethought in padding the allegations?

"Should he also cite himself for accepting the charges unamended when it contains such gross error . . .?

"Can the board recommend to the Board of Equalization that damages be awarded to the victim of inefficiency, incompetence, negligence, malice and misrepresentation?

". . . Hobbes-like, bureaucrats assert:

"All power comes from the State, now that God is dead, and where there is a ruler (appointing power), he has been placed in his position by the State (God if it is king). Wherefore, whoever offers resistance to the ruling powers offers resistance to the State (the ancient crime of sedition, called heresy even earlier).

"The State (God) can take your sons into his army (crusades), he will take your daughters to serve him (as long as you don't 'harass' her), he will take your best olive fields (unmatched by any public hospital training program outside Kansas), and distribute them among his servants (academic bureaucrats).

"Thus, there are bureaucrats, theocrats, and aristocrats. The first is upheld by mediocrity, the middle by mediocrity and grace, the last by grace and excellence. . ."

[Rule 131 does not apply to Medical Residents and only requires that:

["In order to be compensable by cash OR compensating time off, overtime in Work Week Group 1 and in Subgroups 4A, 4B, and 4D must be authorized in advance, except in an emergency, by the appointing authority or its designated representative. This authorization must also be confirmed in writing not later than 10 days after the end of the pay period during which the overtime was worked. Each state agency shall maintain complete and accurate records of all compensable overtime worked by its employees."

[4C employees are not entitled to cash payment for overtime worked. Even staff doctors who go on night duty can only earn compensatory overtime. Residents who can only be assigned overnight work on Fridays in order not to be sleepy during training sessions can only add

their compensatory overtime to their vacation. because their schedule is always full. Witn a computer, future patients stood to gain at the expense of present assignments, and so they can only practice learning it on holidays. Since Dr. Ortega has established the priority of training even before night duty, no one has questioned his requiring residents to spend week-ends in training seminars without compensatory overtime. Do doctors in private practice charge their patients for attending Continuing Medical Education Programs, or can they charge more because they know more afterwards?

[Residents expect to earn more and are willing to sacrifice half what they can already earn as licensed physicians to become specialists.

["Coercion" had become "arranged for"

and back to "coercion" when the overwhelming evidence of the hearing was that the residents arranged to obtain the kind of computer they wanted, and to have it demonstrated to the other residents, and then refused to let Napa keep it before, during, and after the hearing.]

[Can this Court undo the damage that the State Personnel Board has done in refusing to refer to the Board of Equalization what the Court of Appeals decided warranted the award of damages?]

[The rest of the Notice of Punitive Action is equally absurd and hence not dignified even by the state who has omitted it from their Appendix. Residents (Cf. Exhibit E) agree and alumni (Cf. Exhibit P) agree.]

Ex. viii (r. 33, a. 26): 2nd delay:

"We (Napa) hereby request that the

hearing currently scheduled for February 19 be continued to some date the following week. . .

"s/Deputy Attorney General"

[What was arranged was to advance the hearing before written testimony was finished and to deny oral testimony by adjourning when NAPA's, now S.P.B.'s counsel refused to re-cross-examine.]

Ex. x-a (a. 15): Exceptions to S.P.B. "Findings" in "Proposed" Decision:

"1) "THE ABOVE DISMISSAL EFFECTIVE SEPTEMBER 22, 1981 AND APPELLANT'S APPEAL THEREFROM COMPLY WITH THE PROCEDURAL REQUIREMENTS OF THE STATE CIVIL SERVICE ACT." That statement is false.

"In fact, the Act mandates, under G.C. Sec. 18714 (Exhibit G), early and informal resolution of grievances and the establishment of channels (Ex. xiv graphic) for processing then (2 CAC 540-3) according to SPB's own rules:

"When the aggrieved reports to the same offical as the person against whom he has a grievance, that official decides and if he does not resolve the grievance to the satisfaction of both, they must be referred to the next official in

line (Exhibit N). . .

> "(Peon) asked that SPB refer his grievance to the Secretary before there were any written charges, but SPB ignored its mandate and (mis)interpreted the specific request for referral as an appeal to written charges which came on September 16, 1981. (Ex-peon) appealed directly to the SPB the same day by registered mail and (appeal) was received on September 21, 1981. But acknowledgement of his "appeal" was dated Sept. 18, 1981. . .

[The rest of Exceptions to Proposed Decision have been summarized in reply to petition for certiorari and supporting citations.]

Ex. xi-a (a. 36): Undocumented Decision:

> "June 1, 1982:
>
> "Enclosed is Volume V . . . Volumes IV and VI will be forwarded shortly.
>
> "s/Hearing Reporter"

[Why was the hearing transcribed out of chronological order?]

Ex. xv (a. 28): Exhibits in VII:192-8:

"xv-A (73): Stanford Professor and

Nobel Prize nominee:

". . .I want to state simply that I believe that the Napa State residency has become one of the very best in the State under Dr. Magno Ortega's leadership in the sense that his residents remain open, inquiring, and dedicated psychiatrists."

"xv-C-2 (8): Dr. O'Connor's ex-boss:

"Administratively, it is poor practice for an investigating body to recommend disciplinary action. Investigators should investigate and other advisers help decide what to do.

"With special investigators, I'd not want recommendations from him. I'd ask him for the facts he'd found, and ask others for recommendations."

xvi-c (a. 28): An alumnus, now peer:

"Through collaborative arrangements, 21 Department of Corrections Career Psychiatric Residents have been assigned to Napa State Hospital Psychiatric Residency program for psychiatric training for past 15 years. Under the directorship of Magno Ortega, M.D., the Napa Residency Program provided excellent training for the 21 Corrections Career Residents, who have become well trained clinicians and competent psychiatrists serving different

correctional institutions."--Dr. Luke Kim, Chief of Professional Education, California Medical Facility, Vacaville.

Ex. xvii (a. 40): Hearing premature:

"At its meeting on January 9, 1969, the State Personnel Board adopted the following policy on employee discipline:

"1. Appropriate positive corrective efforts such as training, performance evaluation, and counseling usually should be pursued before taking a punitive action. When corrective action is not successful, punitive action should be taken. In the absence of justifying circumstances, a severe punitive action should be preceded by less severe action or other positive corrective efforts. . .

"5. Punitive action should not be based on isolated trivial offenses. Such offenses usually should not be included as a collateral basis for punitive action taken because of a serious offense.

"6. The Board will NOT tolerate any burden upon the use of the appeal procedure. There MUST be NO reprisal or harassment of ANY nature, direct or indirect, expressed or implied, of employees for the exercise of their rights of appeal to the Board."

[Peon took S.P.B. policy as the ground rules for more than a decade, since they have not been revised, and cannot understand why he is now an ex-peon. Punitive action against him was decided before corrective action was attempted. Was there nothing to correct? The last straw (r. 27) may have been the photograph (Ex. 17). Dr. Sutton had been president of the physician's union opposite which Dr. O'Connor as state representative must now sit at the collective bargaining table. In fact, she got the Executive Secretary of the Union himself to come to Dr. Ortega's interrogation, at which his role was questioned and she was denied admission. But miscegenophobia was not perceptible as racial sexism until hearing officer saw Dr. Ortega arrive with another alumna carrying legal reference books,

when he visibly grimaced, probably involuntarily.

ORAL AND WRITTEN TESTIMONY UNDER OATH

Petitioners requested the United States District Court "to take judicial notice of the records . . . of the Superior Court . . . of California, County of Napa in the action entitled MAGNO ORTEGA v. STATE PERSONNEL BOARD No. 44526.

The volumes of the record will be designated chronologically, I to VII. The pages of cross-reference in the reply (r.), appendix (a.), motion (m.) to proceed in forma pauperis, and in affidavit supporting (s.) it will be enclosed in parentheses after the outdented pages/lines of the record, followed by statements/questions which can not be invalidated/nor unanswered.

Appendix-49

Folio I

(Hearing on Oct. 29, 1981)

I:2/1-9 (a. 14): Dr. Vaughn recalled:

INDEX

(Order of) WITNESSES	DIRECT	CROSS
FOR THE RESPONDENT:		
Elizabeth Reynolds	8	
Edith Elizabeth Morgan	12	23
Kay Ann Thompson	39	
Richard M. Vaughn	44, 97	59
Dorothy Owen	72	
William Carnazzo	80	

[As soon as cross-examinations of Mrs. Owen and Dr. Carnazzo were deferred, Dr. Vaughn was recalled without prior permission. Thereafter, Mrs. Owen and Dr. Carnazzo were beyond "recall".]

I:8/11-15 (a. 10): False first promise:

> Dr. Ortega: May I ask when you ask for weaknesses (sic) and I've no way of finding out how to defend myself against their testimony, can I recall them afterwards?

Hearing Officer: Certainly, you may recall any witness you want.

I:36 (a. 24, 28): Access again promised:

Dr. Ortega: . . . -- can I ask again, I can have the witnesses brought back?

Hearing Officer: Well, if it becomes extremely important upon an offer of proof but normally in an administrative hearing we finish with the witness at the time they're called so we inconvenience those people as little as possible. But yes, there's a distinct possibility if their testimony or continued testimony is necessary to call them back.

Dr. Ortega: Because as I have said earlier, my not having full discovery limits my ability to mount a defense, and if you are proceeding with me not able to defend my case, it's forming conclusions.

Hearing Officer: This is no such proceeding. We're attempting to determine all the facts in each case. If it becomes necessary to recall a witness we'll attempt to do so.

I:42/15 (a. 24): Third false promise:

Hearing Officer: Do you have any questions of this witness?

Dr. Ortega: (No audible response).

Hearing Officer: Apparently

not. Witness will be excused.

Dr. Ortega: I reserve the right to ask her back.

Hearing Officer: Well, if something becomes relevant at a later time you can assure me as to what reasons we would recall her and what you would like to ask her, then certainly that may be possible. We're not going to keep all these witnesses sitting around the hearing room, Dr. Ortega.

Dr. Ortega: I'm not talking about now. I have no way of preparing for her, for this, because this is new.

Hearing Officer: If it becomes necessary she can be recalled.

Dr. Ortega: I thought at the beginning we had agreed because I have not had full discovery, we will be able to recall any witnesses we saw now.

Hearing Officer: I don't think there was any finding you hadn't had full discovery. The question is, it may become appropriate to recall a witness and if we find it appropriate to recall the witness, we'll recall the witness.

The witness will be excused.

I:47 (r. 12, 54): Ex-con compelling?

Dr. Vaughn: . . . I was a frequent verbal critic of Medicade in the State of Virginia. . . And I placed them in a position that either bring

some charges against me and allow me to answer them or that I was going to bring suit against them, at which time they brought the Federal Government in the case and brought mail fraud charges against me, since certain of my billings were considered not appropriate and were delivered through the mail. . . I was tried, convicted, and sentenced to six years. And ordered to pay (costs and) make restitution. . . I organized a reading program and taught over a hundred inmates to read who were previously illiterate.

I:55/24 - 56/26 (r. 13): "Get Ortega"?

Dr. Vaughn testified on 10/29/81 that he waited while petitioners Mrs. Owen and Mr. Donoviel talked:

". . . He asked me if -- if I would allow him to proceed (sic) me in speaking to Mrs. Owens about five minutes, and I said certainly and so he proceeded me talking to Mrs. Owens. And then I went in and Mrs. Owens could not have been more polite, . . . and told me not to be alarmed; that they had a way of dealing with this and that I would receive my check in very short order."

I:79/13-25 (a. 14): Recall promised:

Mrs. Owen: I said (to Dr. Ortega) what you really should have

done if you were to do a punitive action (can't punish the unsure for being true to themselves), that he (Dr. Vaughn) was, you know, being insubordinate (reluctant to resume rotation), then it's not a leave of absence as requested by employee (notice did not say it was requested).

Mr. Rubin: I have no further questions of this witness at this time, Mr. Hearing Officer.

For purposes of organization, with respect to some of the other allegations in the notice, I will probably want to recall this witness on the other charges if -- I just think it will facilitate the organization.

Hearing Officer: Well, this witness of course is the personnel officer and she's going to be her for the entire hearing. So I think it would be appropriate in her case.

. . .

I:80/5-16 (r. 25): To AWAIT discovery:

Hearing Officer: Therefore it's granted.

Mr. Rubin: Thank you, sir. So at this time I have no further questions.

Hearing Officer: Dr. Ortega, do you have any questions of Mrs. Owen?

Dr. Ortega: I have a statement to make. If as you said this

(hearing) is the practice of discovery, because it is a fact-finding hearing, I do not want to participate, because it might mean I'm waiving my rights to full discovery. So have no questions (at this time).

Hearing Officer: You will be excused, Mrs. Owen.

Mr. Rubin: Your Honor, I'd like to call Dr. Carnazzo.

I:88/8 - 89/5 (a. 25): Access O.K.:

Mr. Rubin: No further questions, Your Honor.

Hearing Officer: Just a minute.

Do you have any questions of this witness?

Dr. Ortega: Same position statement. I don't want to waive my rights to full discovery by asking any questions (now).

Hearing Officer: Well, as I informed you earlier, administrative proceedings are in effect a discovery process. We're trying to find out what the facts are at this time. I don't want you to be misled in that you have some sort of valid reason for overturning these proceedings by not asking appropriate questions during the course of this hearing. If that's your intent, you should be advised that that's not a probability. This is the proceeding where we do discover what the facts are.

Do you have any questions? You should ask them at this time. This will be your only opportunity.

Dr. Ortega: He works here. There will be no inconvenience to him. The stake of my career is far greater than just simple inconvenience. So I beg to be excused from this procedure until the courts hear on the question of full discovery. The Discovery Act in California are very liberal and they were intended to be. And it is no one's decision except whoever needs it to decide what he needs. Unless it is privileged.

Hearing Officer: All right. Your position is clear. The witness will be excused.

[He was NOT "recalled" and when Dr. Ortega called Mrs. Owen as his witness, she was REFUSED. He was denied the chance to correct her testimony as indicated inside parentheses above, AND to unravel the threads of the conspiracy "to get Ortega".]

I:112/15-25 (r. 7): Documents withheld:

Mr. Rubin: So these orders then were not for the actual purchase of the computer itself; is that right?

Mr. Friday: That's correct.

Q: So you declined to process these at that time, is that correct?
A: That's correct.

Q: Was that because you felt that you couldn't authorize a purchase of a printer and other collateral equipment if the hospital did not have title to a computer itself? (Napa's Volunteer Services had one.)
A: That's right.

I:119/1-6 (r. 8): Contract was approved:

Mr. Rubin: . . . have alleged that Dr. Ortega submitted a contract for Mr. Saeedi to be paid a total of $1800 and we say that contract has not been approved; is that correct?
Mr. Friday: Is that the one for this fiscal year?

Q: That's correct.
A: Yeah. That's correct. It hadn't been processed.

I:122/1-5 (a. 16): Incomplete discovery:

Mr. Rubin: . . . There may be one, the policy directive on sexual harassment, which we only recently discovered which he might not have had at that time. I'd submit that there's no prejudice in that connection.

[Directive requires written report of

Civil Rights Specialist at every stage of investigation, none were produced. Court ordered that "all investigative notes" be furnished Dr. Ortega, but not a single one was ever produced.]

I:124/15-22 (a. 11): Another promise:

> Hearing Officer: Well, if it is possible to continue this to the fourth (of November), we'll continue it on the fifth, if that's necessary.
>
> Dr. Ortega: And I'll be permitted to present all the witnesses I need to make my case?
>
> Hearing Officer: Certainly we're not going to cut everybody short on time in the presentation of evidence.
>
> Dr. Ortega: Thank you.

Folio II
(Hearing on Nov. 16, 1981)

II:2/1-16, 5/10-18 (r. 21): re Skelly:

> Dr. Ortega: (Present petitioners) were instructed by Superior Court to show cause why discovery was not complete.
>
> Respondents (then) promised to have them mailed by the end of business that day.
>
> The next hearing was supposed to be on November 4th and 5th, 1981,

but the demanded documents (specified as the subpurchase orders) were not mailed as promised, and my witnesses had to be told the hearing was postponed -- by whose request I have not been told -- to 10:30 a.m. today, November 16th, 1981.

Some of my witnesses (Dr. Sutton, for one) have been threatened. Some of the residents' basic placements to meet California license requirements have been denied indefinitely.

Now I have the documents (missing sub-purchase orders) on which the charges are based, I demand a (Skelly) hearing without further delay, and it's 10:30, November 16th, 1981.

. . .

Hearing Officer Waller: . . . On the issue of the Skelly Hearing, Skelly Hearings are, of course, important and Rule 61 covers Skelly Hearings. But if there's actually no Skelly Hearing at all, the remedy is for the State Personnel Board to place a new effective date of dismissal, and I am not prepared at this time to rule whether there was or was not effective Skelly proceedings.

Therefore, I'm going to proceed with the hearing and that ruling will be made in the course of preparing the proposed decision for the State Personnel Board.

[Mr. Waller at lunch recess told Mr. Rubin Dr. Ortega did NOT have a Skelly

Hearing but Mr. Rubin argued that it will just mean having to start all over AGAIN. This hearing had ALREADY been pre-scheduled in disregard of Agency Procedures for Invoking discovery and then re-scheduled twice BESIDES. At the END of his proposed decision, Mr. Waller went along with Mr. Rubin: "During the hearing the appellant made repeated assertions that he was denied prehearing discovery. Those assertions are without merit. He was provided all relevant information and documents." He made NO reference to the contrary Superior Court finding.]

II:52/5-23 (r. 28): Subpoenas touted:

> Dr. Ortega: May I ask about the subpoenas for my witnesses?
>
> Hearing Officer: What we're going to do on subpoenas, Dr. Ortega, is that some of -- some of these individuals that you've requested to be present are actually state employees here at the state

hospital. So, there will not be a necessity to issue a subpoena. I'm merely going to ask the state hospital to have those people present.

Then the other people who would be requested on a subpoena, we'll give you a subpoena to serve upon them to give them adequate time and notice as to when we're actually going to listen to them.

In other words, I don't want people from, say, Palo Alto to show up pursuant to a subpoena and sit around all day when there's no chance of us to hear their testimony.

So when it becomes apparent their testimony is necessary and relevant and a time can be set for them to be heard, then we'll issue the necessary subpoena.

II:85, 86 (r. 51): Casual A.L. illegal:

Dr. O'Connor: . . . You were trying to get me to allow you to come back on the grounds the next day, and I wanted to make sure that you did not.

Dr. Ortega: Why not.

A: Because I felt it would seriously encumber the investigation.

Q: How?

A: By having you present with the residents and the other people that were concerned in this matter.

[Either Dr. Ortega was awesome as a mesmerist or the locksmith was also going on vacation and will not be available for investigators to get inside Dr. Ortega's locked DRAWERS.

[(Freud would find this funny: A healthy father may be curious about his daughter's diary, but not in his son's. Peers exaggerate in the locker room to defend against homosexual doubts, but also to indulge their curiousity about peer performance.)

[The residents saw through the subterfuge and there was an outburst which prompted the hearing officer to bare his heart: "These are public hearings only so long as the public does not become involved in the procedure."]

. . .

Dr. Ortega: In your consultation to arrive at that decision, what encumbrances would I have presented?

Mr. Rubin: Mr. Hearing Officer, I'm going to object. The question has been essentially asked and answered.

Hearing Officer: He stated he didn't want you there. I don't know. We could all speculate.

II:88/7-19 (r. 16): DUE process denied:

Dr. Ortega: I take exception to that because an administrative leave involves deprivationof property rights, and there must be procedures followed for doing that, and they're important. And it's important that they know what those procedures are. Without their being known, anybody can be deprived of income for capricious purposes.

Hearing Officer Waller: Do you want to respond?

Mr. Rubin: Yes, sir. If Dr. Ortega is under the impression that the procedures with respect to administrative leave were not properly followed, then he's free to file a grievance or bring a lawsuit for loss of salary or salary that has been properly denied him, but that matter is not relevant in these proceedings.

[It is especially relevant WHEN a token "routine inventory" is undertaken after legal consultation simply because of an

ex-con's speculation at great emotional and financial cost to his victim.]

II:100-102 (a. 6): "Routine" procedure?

Dr. Ortega: Did you authorize searching my personal papers.

Dr. O'Connor: After we had consulted with the attorney in the department, we felt that we could, indeed, go into state property, which was your office, and look into the state property.

Q: Did you look into my private letters?

A: Did I?

Q: Yes.

A: No.

Q: Did you authorize it?

A: I authorized people going into your office, yes.

Q: Looking into my private files?

A: Well, I don't consider those to be private files. Those are on state hospital grounds. They're supposed to be state hospital business, and I would say that I authorized people to go into the state office that you had occupied previously and look into whatever is in that state office.

Yes, indeed, I did that.

Q: And use my private papers?

Hearing Officer Waller: I

think he's answered the question.

Dr. Ortega: Could you use my private papers?

Hearing Officer Waller: The answer is he didn't consider any of the papers in that office to be private. That's why he authorized them to go through all of the papers that were there.

Now, if you want to prove something else later on, perhaps you can do that. I think we've covered that subject.

Dr. Ortega: One of the discovery papers that the court demanded was a photograph.

Did you know about that photograph?

A: Yes.

Q: When did you know about the photograph?

A: I'm not sure of the exact date on that. It was sometime during the investigation.

Q: Before I was dismissed?

A: Again, I'm stating I'm not sure about the exact date of that.

Q: Did you decide then that you would use it?

A: I am not sure what the question is.

Q: Use the photograph.

Hearing Officer Waller: I think that's Mr. Rubin's decision as to what he uses and does not use.

You can question him about that.

. . .

It serves no useful purpose to continue to talk to Dr. O'Connor about what he intends to use, or what he does not intend to use. It's not a personal matter between you and Dr. O'Connor is what I am trying to explain.

. . .

Reducing this to a personal conflict between yourself and Dr. O'Connor really doesn't serve any useful purpose.

Dr. Ortega: Mr. Hearing Officer, it is more than personal. This is constitutional.

[Was "I'm not sure . . . " a signal for hearing officer to testify? The question of "What?" is as important as "When?" in DUE process issues.]

II:103/19-24 (a. 20): No coercion found:

Dr. Ortega: And who were those who were complaining about having contributed?

Dr. O'Connor: I don't recollect as far as our investigation is concerned. I've never said that anybody complained except the one person that I just mentioned who had written a letter that, among other things, mentioned that.

Q: And he was the only one who

complained about it?

A: As far as I know. As far as the donations, that's correct. No residents complained to me about the fact that they had given money to the state hospital for the computer.

Q: And did this resident contribute to the computer?

A: I believe he stated in testimony here that he did not.

[The residents whom he criticized for contributing did NOT want his money.]

II:118/11 - 119/7 (r. 20-21): Rule 131?

Dr. Ortega (to Dr. O'Connor): Before you recommend punitive action, you must know what you're charging the person with violating?

Hearing Officer Waller: He's alleged that it's all here. I mean, we have to determine whether or not it's true and whether, in fact --

Dr. Ortega (to Dr. O'Connor): Separate from that, there must be laws that you allege to have been violated. Do you know what they are?

Mr. Rubin: I'll object.

Hearing Officer Waller: Objection sustained.

Dr. Ortega: Mr. Hearing Officer, is it your contention that the violation need not specify any laws?

Hearing Officer Waller: I'm not contending anything, Dr. Ortega. I'm merely trying to determine facts by listening to witnesses, and determine whether or not the allegations are true or false, and if true or false, what would be an appropriate penalty. They's my sole purpose of being here.

Dr. Ortega: For the record, I would like to state that it is unconstitutional to be vague about what one is accused of.

II:112/22 (a. 20, 22): Who was deceived?

Dr. Ortega: The question is: In all the time you knew me as Chief of Professional Education, have you been misled by me?

Dr. O'Connor: Only you know that.

II:114/11-20 (r. 8): When aggrieved?

Dr. Ortega: Isn't it a fact that before you placed me on administrative leave, we had not spent a half hour in your office?

Dr. O'Connor: I don't know that that's exactly right. The things that I recall are that you were in my office much more frequently over the last several weeks before you were placed on vacation than you had usually been in my office, because you were concerned about the contracts not being signed by Mr. Friday and were trying to encourage me to get Mr.

Friday to handle the contracts for you.

II:126 (r. 16): "Vacation" BY REQUEST:

Dr. O'Connor remembered: "You thought that it would not look good, in light of the university and so on, and you asked me instead of going on administrative leave, would it be permissible to allow you on vacation . . . for two weeks. . . I was initially talking about a period of about a week."

[Respondent NEVER envisioned invasion of private files inside his locked desk drawers; it continued after dismissal!]

II:143/8-19 (a. 25): Subpoenas refused:

Hearing Officer: Now, before we call the next witness, we should have some preliminary matters to discuss insofar as the hearing tomorrow. You have now been provided, Mr. Rubin, with the copy of the witness list that was made -- was given to me by Dr. Ortega.

Now, I notice that certain of those witnesses have already testified in this action. Certain witnesses have not testified, but are state employees who are employed at Napa State Hospital.

Perhaps you could make the employees of Napa State Hospital available tomorrow without the necessity of subpoenas so we could

continue this hearing.

II:150/16-25 (a. 39): Defy court order:

Hearing Officer Waller: Well, if he's going to testify from his notes, of course, they should be made available to the other side. If he can testify without looking at those notes, then they're certainly not subject to discovery.

So I ask you, Doctor, to state now, do you need those notes in order to testify, or can you testify from your own memory?

Dr. Laskay: I can testify from my memory.

Hearing Officer Waller: All right then.

II:167/20 - 171/7 (r. 17): "Forgery"?

Dr. Ortega: Do you know why, in these thank you notes, one is signed and one is not?

Mr. Rubin: I'll object to that.

Hearing Officer: I'm sure he doesn't know. Even Dr. O'Connor doesn't know, the man who was supposed to have signed them both. Perhaps when you testify, you will tell me.

Dr. Ortega: You did not, in fact, take this copy from my office?

Dr. Laskay: That is -- is this the one to Mr. Manshouri?

Q: Yes, without a signature.
A: That's correct. We found that in a file marked "Computer."

Q: And when you were asked, you were checking whether forgery had been involved? Do you recall that?
A: Not in regard to that document, no, we did not.

[Caught off-guard, denial disowned.]

Q: So, you were looking for instances of forgery?
A: Among other things, yes.

Q: And you are an expert in forgery?
A: No, I am not.

Q: Now, what were you going to do when you suspect forgery --
Mr. Rubin: I am going to object.

Hearing Officer Waller: The objection is sustained.

Q: When did you start suspecting forgery?
Mr. Rubin: I'm going to object to this, Your Honor. There's no indication that there's any forgery involved in any of the documents which are germane to this proceeding, and unless some foundation is laid with respect to this --

Dr. Ortega: I thought I did.
Hearing Officer Waller: Well,

he stated he's an investigator asked to invstigate this. I suppose if he found some forgery, he might have mentioned it.

So you might ask him first if he found some forgery.

Dr. Ortega: I wasn't listening.

Hearing Officer Waller: Ask him if, during the course of investigation, he found any forged documents.

Dr. Ortega: That was not my question, Your Honor.

Hearing Officer Waller: Well, I want to get right to it. If he didn't find any, then there's nothing to talk --

Dr. Ortega: Mr. Hearing Officer, you and and district attorney are asking me to conduct the hearing the way you would.

Hearing Officer Waller: Doctor, what I'm trying to do is keep you from asking irrelevant questions and continuing to go into long, tedious matters in a very repetitious manner.

Dr. Ortega: The witness testified that he was looking for forged documents.

Hearing Officer Waller: If I were investigating this, I would be looking for forged documents as well as everything else that went along with it.

Dr. Ortega: And my question is: When did he start looking for forged documents?

Hearing Officer Waller: All right. You may answer the question.

Dr. Laskay: There were two occasions on which this arose. The first one is when Dr. O'Connor himself did not originally recall signing anything other than the two sub-purchase orders. He later decided that that was his signature and he must have signed it at the same time that he signed those two sub-purchase orders.

The second issue-

Dr. Ortega: That's the first instance? He could not recall what he did that day?

A: He recalls signing the two subpurchase orders. He does not specifically recall signing the thank-you letters.

Q: Please continue.

A: And he had absolutely no recollection about the letter with the printer.

The second instance was when Mr. -- when we asked Mr. Saeedi himself about when he had indeed signed the contract to provide the training, and whether he had signed the individual invoices eachof the times he arrived at the state hospital.

He said that he did not recollect signing something at the beginning. He did not -- he stated

that he could not recall any specific details about it, and he said that he did not recall finding any invoices subsequently.

When we asked the secretaries themselves who handled the invoices whether or not Mr. Saeedi had signed them, they stated that they had witnessed him signing the invoices each time that they handed it to him.

At that point we dropped the issue.

[But not the investigation of fraud, since coercion cannot be established. Field investigation of Medi-Cal patient billings were pursued (Exhibit xxi) and inquiries about sexual conduct reached alumni who have already moved out of state. No information was worth paying anyone to testify with a free trip to California, and so the charges were padded.]

Folio III
(Hearing on Nov. 17, 1981)

III:1/19 (m. 1): ILLEGAL appointment:

Dr. Ortega: How long have you been Medical Consultant?

Dr. Laskay: I was actually appointed on a permanent basis beginning Oct. 1st. I was appointed on a limited term basis on June 1st, and I've been practicing since Nov. 15th of 1980.

Q: So, you have been acting for how long?

A: In an acting position almost a year. It's been a year.

III:6/23 - 8/15 (a. 15): Who complained?

Dr. Ortega: What prompted investigation about sexual harassment?

Dr. Laskay: I received a letter -- first I received a communication stating that an individual wished to talk to us about the matter of sexual harassment.

Q: And this individual was who?

A: Dr. Elizabeth Reynolds.

Q: That is not in the statement in discovery.

Mr. Rubin: Just a moment. I'll object.

Dr. Ortega: Never mind. We'll

introduce that particular document later.

Q: So, that was the start of it?

A: Yes.

Q: And then you proceeded to ask residents whether they slept with me?

A: I never asked a resident if they slept with you.

Q: What did you ask them about sexual harassment?

A: The question, I believe, was always phrased, "Do you ever recall having been harassed in a sexual manner by Dr. Ortega?"

Q: You never asked them if they had sex with me?

A: I do not recall ever asking any resident if they had sex with you.

Q: On the telephone to someone who was on vacation?

A: Not on the telephone.

III:9/7-13 (a. 20): No coercion found:

Dr. Ortega: You also investigated the computer?

Dr. Laskay: That's correct.

Q: And the person who complained about being coerced, wasn't he someone you referred for training in the program?

A: I do not recall any of the

residents saying they had been coerced. That was not the charge.

III:10/21 - 11/9 (a. 14, 25): Relevant?

Dr. Ortega: Dr. Carnazzo.

Hearing Officer: He's already testified.

Dr. Ortega: Yes, but that was before I had discovery, and you had agreed we could cross-examine those.

Hearing Officer: Mr. Rubin?

Mr. Rubin: That is a total fabrication. As I indicated on the record, when we went to court, there was no additional discovery ordered with the exception of the materials that we had volunteered to produce since it had appeared as a recent development that some additional materials would be relevant.

[Thus, Exhibits 17-19 which were STOLEN from respondent were NOT RELEVANT until after the investigation was all over. Furthermore, Exhibit H is court-ordered discovery of sub-purchase orders that were testified to but not produced in evidence on the first day of hearings.]

III:11/23 - 12/14 (a. 11): Repudiation:

Hearing Officer: (To Mr. Rubin) Your objection will be

sustained. We're not recalling any witnesses who have already testified.

With that ruling, go ahead and complete your questioning.

Dr. Ortega: I object because there was a clear understanding that we can proceed because the witnesses willbe inconvenienced otherwise.

Hearing Officer: If there was a clear understandig that those people's further testimony wasn't necessary after you had completed some form of discovery, then they may be recalled.

Apparently, that's not true. You were given full discovery. You were given an adequate opportunity to question those witnesses. They will NOT BE RECALLED. (Emphasis added.)

[Even Mr. Friday, also co-petitioner, -- who testified about sub-purchase orders WITHOUT producing them -- was NOT subpoenaed, though the documents negating his testimony were ordered produced by court.]

III:20/24 - 21/12 (m. 1, r. 29): Empty:

Dr. Ortega: Now, in your investigation, did you come up with anything then?

Dr. Laskay: At that time?

Q: Yes. When you questioned me.

A: I had had the discussion already with the one female resident.

Q: And that was the only one you had?

A: At that time, that's correct.

Q: Right. What matters did you drop after that questioning?

Hearing Officer Waller: Well, here again, the main instance is not the investigation. The problem is: What's been alleged, and can it be proved or not proved?

I'm going to go ahead and excuse Dr. Laskay. I think he's testified long enough.

III:21/13 - 23/19 (r. 29-31): Illegal:

Hearing Officer Waller: Is that the last witness you had?

Mr. Rubin: Yes. That concludes our case.

Hearing Officer Waller: Well, then, I'm going to suggest to you that you call Dr. Ortega as an adverse witness, under 776, so we can actually find out what the issues are in this case. Then we can go ahead and proceed in an orderly manner without groping for facts and statistics.

[Is this to force self-incrimination by

another interrogation when the other came up empty? Can Dr. Ortega testify and represent himself at the same time? If he did, will it force a recess? If he did not, will he be asked to testify BEYOND earshot?]

III:21/23 (a. 20): "Arrogance" charged?

> Dr. Ortega: I do not want to do that. I should be permitted to present my own defense. If I have not testified, you can not call me as an adverse witness.
>
> Hearing Officer: We're going to have you called as a witness, and we're going to identify what are the real issues in this case. We have broad boundaries in the discretion in an administrative hearing.
>
> Dr. Ortega: I don't think you have that discretion.
>
> Hearing Officer Waller: I don't care to argue. You'll be called as a witness and sworn.
>
> Dr. Laskay, you'll be excused.

III:39/8 (r. 9): Incomplete discovery:

> Mr. Rubin: Now, just so I understand your testimony, Dr. Ortega, you're testifying that the contract with Mr. Saeedi which is referred to in this Notice of Punitive Action, was, in fact,

approved and that you saw a copy of that approved contract, is that your testimony.

Dr. Ortega: Yes.

Q: And you've also testified that you will produce that copy?

A: No. I said I saw such a copy. The copy should be around if it is approved.

Mr. Rubin: Mr. Hearing Officer, I believe that he did testify --

Dr. Ortega: I'll make sure we produce one if I have to go to Sacramento, if it is that important.

Mr. Rubin: All right. I would then request -- formally request that that document be produced.

Hearing Officer Waller: He's stated he would produce it.

III:44/20 - 45/16 (a. 23): "Abrasive"?

Hearing Officer Waller: Now, this might be appropriate for a hospital worker who may indicate that they don't understand what's being discussed, that they don't understand the question, that they don't understand the issues, but it certainly is not impressive by a person who is Chief of Professional Education.

So I'm going to recess this hearing at this time for fifteen minutes. I'll let you consider your position in this case, and then we will resume the questioning.

Dr. Ortega: May I ask a question before we recess?

Hearing Officer Waller: Yes.

Dr. Ortega: The standards you have announced, are they somewhere written up?

Hearing Officer Waller: This is the typical question that I wish you would reconsider and actually try to put your best foot forward and present your side of the case rather than just a total argumentative stance.

Dr. Ortega: Mr. Waller, I try to save him some time. He won't let me.

Hearing Officer Waller: This hearing will be in recess for fifteen minutes.

[But too late to coach Mr. Rubin who declined offer of an earlier recess.]

III:47/21 - 48/9 (a. 24): Surrendered:

Mr. Rubin: During the recess, I had an opportunity to confer with some members of the hospital administration here, and we were puzzled by Dr. Ortega's testimony that he had seen a signed copy of a contract. We think we know what he might be referring to. It is not a signed contract, but this may have misled him slightly.

The actual notice at the back of that exhibit, the document I

brought to your attention, is not signed by anyone.

Now, I have a copy which I will introduce into evidence which has a signature of a department official in Sacramento on the request to initiate a contract and it my be this signature on the request to initiate a contract which misled Dr. Ortega.

[Dr. Ortega had been dealing with such contracts for 17 years, LONGER than anyone in the hospital administration.]

III:62/7 (a. 58): Computer was secured:

Mr. Rubin: So, you didn't have ownership personally of that computer, isn't that right.

Dr. Ortega: No, never.

Q: Now, to your knowledge, did that computer ever acquire a hospital number as part of the hospital's inventory of equipment?

A: No, never.

Q: But you placed that computer on hospital property, didn't you.

A. Yes.

Q: Did you ever --

A: So is my car on hospital property.

Q: Did you ever process this donation through the property

department of the accounting office of the hospital?

A: Neither Dr. O'Connor nor I know what those procedures were.

Q: So, I take it then that you never did process it that way?

A: Yes.

[Thus, only WHAT HAS BEEN SO PROCESSED IS HOSPITAL PROPERTY, e.g., a desk, but NOT its CONTENTS until also processed.]

III:69 (r. 10): Stanford is important:

Mr. Hearing Officer: I think the question to you, Dr. Gonda, is: Is the residency program at Napa State Hospital linked in some way with Stanford, and if so, how, and what's your connection with it?

Dr. Gonda: Yes, it is. It's linked with us in several ways.

Number one, we have members of our faculty who are consultants that come here and lecture on a regular basis. That is, each individual doesn't necessarily come on a regular basis, but members of the faculty come on a regular basis.

We have also made provisions for residents from Napa to take special training in aread of their special interest if we have those aread of interest represented in Stanford. Our work connection is both ways.

III:71 (r. 10): Work done not an issue:

Dr. Gonda elaborated thusly: "At that time (1964) we had many more State Hospitals than we do now, and it was in conjunction with this that I set forth a program with the Chiefs of Professional Education that, Number One, would educate the people who are already there and not specialists in the field at the various State Hospitals and, Two, that the Professional Education Chief would also attempt to work out the very best possible residency programs.

"I just had a brief look at that, but if my eyes weren't deceiving me, this is almost -- it's very difficult to believe the tremendously high percentage. If I am interpreting this right, these graduates, alumni it says here, of the program here at Napa State Hospital, and I would venture to say that well over 80 percent of them are in full-time practice as staff psychiatrists in either a State Hospital or a correctional facility. I didn't even dream a result like this."

Hearing Officer: Perhaps it would help the record if you would state what your position is at Stanford.

Dr. Gonda: Currently, I'm the Chairman of the Department of Psychiatry and Behavioral Sciences. . .

III:74 (r. 60): Trumped-up charges:

> Hearing Officer: . . . although it states on the very beginning of the punitive action that part of this cause for dismissal is inefficiency, there are no specific allegations of inefficiency in the performance of hospital duties except insofar as you could relate not submitting the proper documents concerning the computer and that type of thing with inefficiency.

[All documents were, including optional feasibility study, there and in order. Mr. Friday delayed computer consultant contract and Mrs. Owen revoked ex-con's legal leave without authority.]

III:81/24 - 82 (a. 30): Uncorrupt power:

> Dr. Ortega: What I suggested to you was not something that you would have done?
>
> Dr. Sutton: No. What Dr. Ortega is referring to is the fact that he -- his assignment of me to the California Medical Facility at one point during my residency resulted in a great deal of professional and personal growth for me. That requirement ultimately resulted in my career choice of correctional or forensic psychiatry.

Basically what happened is I was frightened of physically violent patients during my residency, and in order to deal with the patients, you can't feel that way. So, I was assigned to the California Medical Facility to a program that was set up to deal with violent patients.

As a result of that, I overcame my fears and became rather interested in it and chose to work at California State prisons upon my graduation. I say this because it says a lot about Dr. Ortega's style of handling problems. Basically, he does an excellent job. He promotes the professional and personal growth of residents, many times through assigning them on rotation to areas where they often don't want to go because he feels it is good for them. At least in my own case, assignments of this type I found to be helpful, even though at times I resisted them.

There is another assignment which I resisted during my residency. I had no liking for psychoanalysis, and he felt I should have exposure. And out of that rotation, even though I fought it all the way, I also grew professionally . . .

III:90 (r. 26): Support to be inhibited:

Dr. Sutton: . . . I was rather infatuated with Dr. Ortega.

Mr. Rubin: Did you have sexual intercourse with him?

A: No, I never did.

Q: You never did?
A: I never did, and Dr. Ortega always treated me with respect and decency. He never took advantage of my feelings of attraction towards him.

Q: Did he ever kiss you?
A: Yes.

Q: Has he ever embraced you?
A: Yes, but not in a sexual fashion, in an affectionate fashion, almost the way you might kiss a child.

Q: All right. Is this a photograph of you?
A: Yes, that is. That was taken in a photo studio by a professional photographer.

Q: And did you send this to Dr. Ortega?
A: I probably did. I don't have a specific recollection of it. There were many photos taken of me during that time and subsequent years. . .

Q: Dr. Sutton, my question was: Did you send it to Dr. Ortega? That was the question. What's your answer?
A: I don't know if I sent it or I gave it.

Q: But you delivered it into his possession.
A: Yes, I'm sure I did.

Mr. Rubin: I'd like to introduce this as our next exhibit.
Dr. Ortega: Objection.

Hearing Officer Waller: Well, there again, it has very limited relevance, but as long as we are off on this tangent, it will be marked Exhibit 17, and it will be admitted.

[How it is EVEN TANGENTIALLY RELATED to the work Dr. Ortega does is left open.]

III:110/6 (r. 10): Breaking UCSF link:

Dr. Ortega: So, why was your payroll check held up?
Dr. Metcalf: Well, that's what I wanted to ask the administration, and I did ask the administration.

Q: What did they say?
A: They said they needed to account for my time. Since I was paid two-fifth time, they wanted to know what I did with sixteen hours a week.

Q: And before that happened, why was there any reason to look into that?
A: Well, there never had been any reason to look into it before, but I was presented with that reasonable request. I objected to the way the request was couched, but I think it's a reasonable request.

Q: How was the request couch-

ed?

A: I received a letter saying that they had to have that information and that my check was being held up and had already been held up for several days until they got that information.

Q: And before that you were asked to participate in an investigation?

A: Yes.

Q: About me?

A: Yes, I was contacted by telephone.

Q: By whom?

A: Dr. Laskay.

Q: Can you tell us what happened?

A: Well, I got a telephone call at home, and I don't remember -- I'm thinking back on it, whether it was a week-end or not -- but it was about 9:00 in the evening, and Dr. Laskay said words to the effect that he would like to know if I had had any difficulty with Magno Ortega.

III:122 (a. 28): Director from 1964:

Q: In all the time you have known me, have I deceived you?

A: Not that I am aware of.

Q: Did my --

A: You irritated me at times, but never deceived me.

Q: Did my department change during that time?

A: Yes, it grew considerably.

Q: While the hospital was shrinking?

A: While the hospital was shrinking, and I will say that I always admired you for that, that you were able to maintain this residency program under the opposition of the Department of Mental Health in Sacramento.

In fact, as far as I know, you were the only one that maintained an accredited residency program in a State Hospital in California.

III:126 (a. 37): Director, now staff:

Dr. Ortega: Did I ever bring discredit to the hospital?

Dr. Spratt: Not that I am aware of.

III:131 (a. 30): Ex-Resident, now staff:

Q: Dr. Jackson, without any prompting on my part, you came to me and said you knew what I was doing about the contributing. What did you tell me?

A: I don't know if I was so bold to say I knew what you were doing, but I knew that I -- that the one thing I thought the overall effect was that the investment of time and money and that the level of attention and involvement in the computer would be heightened, and

that if a computer suddenly appeared, it would probably be treated with some disinterest unless there was an active involvement and interest on the part of the residents.

This was, I think, an effective way of heightening and making some kind of an investment in it in either time or money.

[Ex-trainees could receive TWICE as much working as learning. But even after his installment check bounced while a resident, he made good on his promise to pay for the computer they needed for training.]

III:137 (r. 5): UCSF feasibility study:

Dr. Ortega: You had told us, in fact, that we needed a series of equipment, but not -- but having the equipment will not be the answer if we did not have exclusive use or first claim on the computer, is that right?

Dr. Callaway: (Witness nods head.

Hearing Officer: You'll have to answer audibly.

A: Can I answer the question as something to that intent. I'm not exactly sure of the words.

Q: And that you recommended it

be used primarily for teaching and research because it could be totally usurped by library and clerical services, something to that effect?

A: We discussed that. Exactly who thought of that problem of usurping first, I'm not sure, but I certainly agreed with that.

Q: And in your work with the residents, it would be important to have a modem and timer for the computer that's here in the hospital, is that right?

A. A modem and a timer.

Q: Right. That's what I mean.
A: Yes.

[The wording of the thank-you note for the printer left NO room for business take-over or donation of equipment.]

Folio IV
(Hearing on Dec. 30, 1981)

IV:3-7 (a. 8): Indecision pretended:

Hearing Officer: . . . (T)his is the time for the presentation of Dr. Ortega's case. He indicated he wanted to immediately recall Dr. O'Connor and Mrs. Owen. Mr. Rubin indicated he was going to object to that procedure, and I made a statement that Dr. Ortega insisted go on the record. And that is that we'll hear from his witnesses first and his testimony, -- (can Dr.

Ortega be "recalled" and by whom? objected to on V:95, answered on V:96) -- we'll complete his side of the case -- (to see if "recall" will outweigh adverse testimony so far) -- and then we'll separately consider whether or not any of these witnesses that have previously testified should be recalled.

Do you have anything further you would like to add to that, Dr. Ortega?

Dr. Ortega: Yes. I think this is unfair, I think there are precedents to show that a party can ask for his witnesses without being bound by the fact that they have been called by the adverse party before. As you will remember during Dr. O'Connor's cross-examination you limited him to what Dr. Rubin -- Mr. Rubin, wanted him to testify about and he only wanted to testify about one allegation in fact. I think I should examine him about directly what other matters besides those since it is on his authority that I'm being dismissed. . . . He was a resident in my program, and I think what has happened between then and now are of relevance. . .

Hearing Officer: You wish to comment before I rule, Mr. Rubin?

Mr. Rubin: . . . I would very strongly urge that you not permit this to be undertaken, and WE are confident that this record will stand up in any further judicial proceedings if that's necessary. And we're satisfied that . . . you have done everything you could to protect his rights, to give him every opportunity. And as I, say we're confident that should WE be called upon to

defend that at some subsequent proceedings, that the record is clear he's been accorded every possible protection.

Dr. Ortega: Mr. Waller?

Hearing Officer: Well, I'm not going to rule finally on that issue of recall at this time. I'm going to adhere to my original ruling this morning and that is that we will not recall witnesses at this time. . .

Dr. Ortega: I think it is a mistake to think of it as recall, because they have been called once, but called by their own Counsel. I'm calling them for the first time, so this is not recall.

Hearing Officer: Well, I don't care to discuss that issue further at this time. We'll discuss it, as I said, later before we close the proceedings. If you have other witnesses or wish to testify yourself, let's go ahead and continue, Dr. Ortega.

Dr. Ortega: I take exception to this because this really turns my defense backwards.

IV:40/14 - 41/18 (r. 13): "Get Ortega":

Mr. Donoviel himself testified on 12/29/81 that "I suggested that Dr. Vaughn go directly to Mrs. Owen about his complaint of not being paid for I believe it was a month's service. And that event, that package, tripped off further comments about your conduct and that led to the investigation."

[Hearing reporter omitted "deal" after "package".]

IV:19 (r. 8, 21): Second to Mr. Friday:

> Dr Ortega to Mr. S: How is the contract approved?
> A: It's approved both locally and at headquarters.
>
> Q: What happens if it is not approved locally?
> A: Then it remains unapproved and to my knowledge you would have severe problem.
>
> Q: What happens if that disapproval was protested?
> A: Well, I believe then there would be a meeting of the minds between the protester, the reviewing party probably at headquarters and the person that needs the consultant.
>
> Q: So you'd have a three way meeting at least?
> . . .
> A: I would -- am speaking from my other case. I would assume there would be this, yes.

IV:20 (a. 10): Dr. Ortega "recallable":

> Hearing Officer: "Well, I assume you can testify to that if you have personal knowledge of it at the time you're recalled, if you wish to further testify" (about all

contracts being required to be transmitted with all recommendation, and never held up because of doubts).

IV:21/24: Purchasing uncertainties:

Dr. Ortega: You (Mr. Friday's second in command) are also a member of the Clinical Executive Committe?

A: I am.

Q: And at one meeting were asked about the expected delivery of hospital bus tires. Do you remember that?

A: Yes.

Q: And this was the middle of summer and the delivery date was after Halloween; is that right?

. . .

A: I said I wouldn't be surprised if they didn't show up, you know, until Halloween. But I was surprised, as often is the case, because the tires had been ordered and the process cleared and things did arrive and (patients) were able to go to the fair.

Q: And we also talked about getting patients involved in those outings. Do you have any reservations about getting them involved in any way?

Mr. Rubin: Mr. Hearing Officer, I'm going to object to this question. It's not relevant to anything. I should have objected to the question concerning bus tires,

but it slipped by. No, I'm going to -- this is clearly irrelevant.

Hearing Officer: Be sustained.

[In fact, involving the patients was the last exchange in the Clinical Executive Committee meeting chaired by Mr. Donoviel, where he reported on a recent wasteful junket when there are funding priorities that face uncertain futures. That just happened to be Dr. Ortega's LAST clinical executive committee meeting before being placed on UNPAID administrative leave.

[Dr. Ortega asked the group whether patients would CHIP IN and get tires instead of being cooped up inside hot day rooms to forego the risk of a blowout on the road on their way to the fair. He also mentioned it to the Attorney General and invited him TO INVESTIGATE possible conflicts of interest. Ex. SS.]

Dr. Ortega: Why were you not one of the investigators?

Mr. Rubin: I'll object to that.

Hearing Officer: Sustained.

IV:54 (r. 10,25): First year resident:

Q: Do you remember meeting with Dr. O'Connor at the start of the investigation?

A: Yes.

Q: Do you remember his mentioning that the person who started it stipulated that if the administrator did not look in his complaints, State investigators would be called in?

A: Yes.

Q: Do you remember Dr. O'Connor talking at great length about his experience under my directorship?

A: Yes, he had mentioned that he had come here because of your -- the novel way you had let him interview the patients during his application time.

Q: And he had been accepted in many other places?

A: Yes.

Q: Do you remember his talking about some unhappiness he had also?

A: I think he mentioned about your telling him to go to Mt. Zion for (rotation) and he was not happy about it because of the commute or

something but after going to (rotation) he was glad he had gone through it and it had helped him pass the boards. (Reporter heard "meditation" for "rotation" both times!)

. . .

Q: Do you remember seeing Dr. Vaughn the first day of your orientation in July?

A: Yes.

Q: Do you recall my telling him he should be in Highland?

A: Yes.

Q: At the meeting with Dr. O'Connor did that resident worry about reprisal?

A: Yes.

Q: Did he worry because Dr. O'Connor was oh, so positive that all would turn out well?

A: Yes.

Q: Did Dr. O'Connor answer him that Dr. Ortega was not that type of a person?

A: Yes.

Q: Were you told by the same resident(s) after the meeting to expect questions about sexual harassment?

A: We had gone from the meeting with Dr. O'Connor. We went to our usual conference room and were discussing about the investigation. I men the -- your leave, and he ha said expect questions about -- "I've

something else for you" he said. He told us and said expect questions on sexual harassment.

. . .

Q: While all this was happening none of you could see me; is that right?

A: Yes, we had received a memo that we could not see Dr. Ortega during office hours.

Q: And yet you are not on a 40-hour week, are you?

A: No.

Q: Did Dr. O'Connor reassure the residents that UC Davis would not take over the training program?

A: Yes.

Q: Has there been a significant increase in sick leave since my dismissal?

A: I don't know.

Q: I have to ask these questions. Did the Hearing Officer accuse me of harassing him and pounding the table on the first day of the hearing?

A: Yes.

Q: Did he promise witnesses will be returned for Cross Examination?

A: Yes.

IV:68/26 - 69/26 (a. 30): Leadership:

Dr. Ortega: Would it be fair to say you know me better than the

residents who have testified so far?
Ex-executive: Yes.

Q: Would it also be fair to say I know you better than I know them?
A: Yes, I think so.

Q: When you met with Dr. O'Connor, and he talked about having to go to Mt. Zion, did the same thing happen to you?
A: Yes, a very similar situation occurred for me in April 1981.

Q: What makes you think I can insist on that?
A: Well, I've -- I have spent some time as I've been here trying to, you know, figure out how these things work because I think it's quite informative to a psychiatrist, and it seems tome that at least a good part of it is rather indepth and intense study that you make of each one of us to the point that you feel that you know us very well. And I think that you do. So, you know our strengths and weaknesses and areas where we might do well to have additional training or where we might excel and add to our knowledge and ability as psychiatrists. I think Mt. Zion especially to work in the crisis clinic was, there was an area where you thought that I would both do well, and gain a great deal of pertinent experience. You did insist that I do that and gave me a very clear ultimatum so to speak

which I had no difficulty understanding that either continue with that rotation or quit the residency.

Q: Why didn't I offer the same ultimatum to Dr. Vaughn?

A: Well, it's a matter of my opinion about it is that my -- that you would not feel Dr. Vaughn could tolerate such an ultimatum. In response to it you had characterized me as -- as defiant at least at one point and I think that's probably accurate.

[He was correct about Dr. Ortega and Dr. Vaughn. In fact, Dr. Ortega TESTED Dr. Vaughn and found he could tolerate physical stress (losing all, repeat all, the big points in tennis) BETTER than being away from his wife.]

Folio V
(Hearing on Dec. 30, 1981)

V:10/10 (r. 9): Supporting decisions:

Dr. Ortega: If your business manager had not tried to obtain approval for training contracts routed through him in the use of computers, would you tell him to do so without delay.

Dr. Clanon (ex-director of correctional facility): I guess it

would depend on the circumstances. Depend on the circumstances. If he was negotiating, certainly I would. If he was negotiating to do something that he should have been doing.

Q: How would you determine that?

A: Disputes of that kind were not uncommon between business department and other departments. Or misunderstandings, disputes and so forth and I guess the most common way I would resolve that is to tell the business manager and department head, the two people involved, to meet and then come tell me or give me some understanding of what the disagreement was or else resolve it.

Q: And if it was unresolved?

A: Well, then it's my job, it was my job to resolve it, basically, to make a decision.

Q: Would you call both of them?

A: Yeah, usually I would. I would have both people. I would meet with both people at the same time and we would discuss it and so that both understand; whatever the decision was it would be understood by both of them.

V:13/28 - 15/14 (r. 7): Poor management:

Dr. Ortega: Or would you instead initiate an investigation of administrative practices in pro-

curement of data processing equipment and training by your Department of Education and Research?

Dr. Clanon: No, I -- you know, I would not. It was such a common occurrence in my experience that people would submit inaccurate or improper kind of requests for equipment out of -- usually out of ignorance of what was required that no, if I had taken each such instance as evidence of some misconduct, there would have been a lot of investigating. The usual, as I have indicated already, the usual response that was appropriate to that kind of thing was to get the department head and the business manager to sit down and communicate about what was going on.

Q: You have some understanding of what has happened and the reason why this hearing is taking place. Do you have some thoughts you would like to share about how it could have been headed off?

A: Well, I don't know that I have a full understanding of or all information about this hearing, but what understanding I have is that a primary charge against youis that has todo with this -- this -- some misconduct in relation to purchasing or attempting to purchase some accessories for a computer. And that there are several factors involved. One has to do with some question about coercion and -- of the residents to contribute money to purchase this thing, the original

computer, and secondly some improper things done to purchase, through the State, accessories for the computer and contract for training in the use of the computer, so forth.

You know those things sound, as I've indicated in the answer to the previous question, what I know about that, suggests to me that an action for dismissal of you and under an apparently unfavorable kind of condition, does not seem appropriate to me. It seems to me that, as I've indicated that that -- that, you know, the knowledge of how to comply with regulations, purchasing regulations, that change yearly and sometimes more often than once a year and are not communicated to people in positions such as you, is not an -- is not a, may be a cause for some supervisory action and may even be a cause for some disciplinary action in some cases, but not -- not of -- not of dismissal.

V:18/10 (r. 51): When is A.L. needed?

Dr. Ortega: In a setting like yours where security is more sensitive, when does it become necessary for some one to go on administrative leave?

Dr. Clanon: Well, usually it would be a situation where their presence in the institution or their continued discharge of the duties of whatever their job was, you know, would pose a threat of some kind to security. The, you know, to get more specifically to what I know

about the facts of this case,I don't know of any aspect of this case that would have led me as a superintendent to place you on administrative leave. You know, pending the resolution of a pending disciplinary action.

V:28/3 (a. 24): How do you treat talent?

Dr. Ortega: Do you remember when you first came to Napa?
Dr. Magbitang (last Chief Resident): Yes, what about it.

Q: Do you remember being so shy?
A: Yes.

Q: And stuttering when you had to criticize somebody?
A: Yes.

Q: But succeeding eventually in fighting for minorities in Sacramento?
A: Yes.

Q: And being lionized in Stanford?
A: Yes.

Q: Do you remember when you were an intern and you lost 20 pounds and you came tome, and instead of reducing your work load, I gave you some of my private patients; a family that I was seeing?
A: Yes.

Q: Do you understand why? How all this happened?
A: Which one?

Q: How it is possible for you to get over being bashful?
A: Well, I think you forced me to my limit and drew out all my potentials. And that's -- I didn't know I had those potentials and you drew it from me.

[From her GENES, her grandmother was a self-made millionaire, her grandfather the governor of their province.]

V:35 (r. 11): Budget coveted by U.C.D.:

Dr. Linn, Dr. O'Connor's ex-boss as hospital director, testified on Dec. 30, 1981, about the then UCD Director of Residency Training:

"Well, I do recall one incident at, when he was working for University of California at Davis, involved with obtaining funds for their training programs that he admitted to me that informally that his main purpose was to obtain sufficient money from residency programs throughout the State to keep his own training program going."

V:41/14 (r. 42): Dr. O'Connor's ex-boss:

Dr. Ortega: . . . If from what you have gathered in the way these things are happening about the

computer, would you have instructed the business manager to approve the training contracts?

A: I believe I would, yes.

Q: And purchase accessories for a computer used for training and research in the Department of Professional Education?

A: I think so, yes.

Q: If the computer was alleged to have been purchased because of coercion on the basis of coercion of contributors who happened to be the residents, would you investigate the Chief of Professional Education?

Q: An allegation of that sort would be a very serious one and would certainly merit looking into, yes.

Q: How would you proceed?

A: If there are still special investigators present at -- in State service as they were when I was the director, I would assign that investigation to that individual.

Q: Why him?

A: Because his training is in criminal type investigations and this is an allegation which is very close to a criminal allegation here.

. . .

Q: If you did not have a special investigator available, what would you do if an investigation is necessary.?

A: Well, I would obviously try to choose the most unbiased group of

individuals that I could find. One who had, perhaps from another hospital that had no connection with any of the parties involved.

V:53/19 (a. 19): Ex-con not supported:

Dr. Ortega: And you had your orientation with other residents who came after you in July?
Second year resident: July 1st.

Q: Do you remember seeing Dr. Vaughn come tc the first day of orientation?
A: Yes.

Q: Do you recall my telling him he should be in Highland?
A: Yes, because you said it in a loud voice.

Q: And you had met with Dr. O'Connor after I was placed on administrative leave?
A: Yes. We -- I learned about it Friday morning when I came to work that you were gone. We we got the, I think the memo that we have to ask for, we were to meet with Dr. O'Connor for the following Monday.

Q: Did Dr. O'Connor say if he did not start the investigation, a special investigator would?
A: Yes.

V:57 (r. 20): Second year resident:

Q: Did Dr. Brannick announce

that Dr. O'Connor officially terminated Dr. Ortega on the first of September?

A: It think it was on Tuesday when we were having our regular conferences that Dr. Brannick told us as acting Chief of Professional Education that Dr. O'Connor has terminated Dr. Ortega.

Q: Did Dr. O'Connor mention that he had offered Dr. Ortega the option of resigning?

A: Yes.

Q: And now that he was dismissed, he was not eligible for time and benefits?

Q: If I remember right, one of the residents asked if you still have those benefits and Dr. O'Connor said since you refused to resign then you, and you were terminated, then you don't, you are not entitled to the benefits.

Q: Did he say that he consulted with other officials before deciding to dismiss me?

A: Yes.

V:77 (a. 28): Alumnus at the hearing:

Q: Your experience with me over the years that we have known each other, can you say something about that?

A: I think you're autocratic. It's the first word that came to mind. Your're also an excellent teacher, one of the most creative

that I've met.

Q: In that -- I'm sorry, Mr. Hearing Officer. In your -- can you elaborate further on the autocracy?

A: In all the time that I've known you, you have made decisions about who should go where and do what and when. Seemingly regardless of what they wanted. Many residents have resented that. I've talked with many of them. I myself have resented that at times and in all that I never felt, and even in retrospect never felt that any of those decisions were made for other than concerns about their education and turning out quality psychiatrists.

V:82 (r. 5) Senior psychiatric resident:

Q: ...Simply: Why would you give $80 that you did not have at the time and that you did not have until July, for a computer?

A: Well, it's for educational and research purposes, and I was -- and I am next on the line to do research, so I am interested in it.

Q: You expect to use it in your research?

A: Yes, I used it recently. I have a -- most of the data because I'm doing research on immunology and making some correlations with psychosis.

Q: You expect to finish that research?

A: With the help of Dr. Callaway of UC (San Francisco), yes, I hope so.

Q: You expect to use the computer for that?
A: I expect to use it more often.

Q: When was the last time you used it?
A: Just recently. In your house. I don't -- maybe a month ago.

[The following week, residents received a memo that they cannot use computer!]

Q: Do you want your $80 back?
A: No, I voluntarily contributed it for the computer.

Q: Incidentally, is it costing you more to attend these hearings?
A: Yes, it would.

Q: How much have you spent of your own money to attend these hearings?
A: Oh, I've taken vacation time.

Q: How many days?
A: Since the start of the hearing.

Q: In cash, how much would that be?
A: I'm not sure. Would it be -- if it is $10 or $11 per hour, so

I took vacation. I don't know how many days already.

Q: And you did not have that money in July to give?
A: No.

Q: Why do you -- why do you come?
A: Well--

Q: This is not a movie.
A: I -- I feel I have a lot of strong feelings about this. I don't understand why you were dismissed and why so precipituously. I still don't understand.

Q: You've been to all these hearings?
A: Yes.

Q: And you cannot understand from what has happened so far?
A: I don't know.

V:91 (r. 31): Is this a fair hearing?

Dr. Ortega: Mr. Hearing Officer, when Dr. Gandhi was called, I objected because she was my witness. And so I want to call her now.

Hearing Officer: Well, I think this is as good a time as any to settle that issue. You were advised at the time that it was well established procedure of the State Personnel Board to call a witness only once. No matter which party called the witness. And at that

time the witness would testify to all relevant facts. Therefore I am not going to continue this hearing by calling all of these witnesses or any of them for the second time. So your motion to recall these people is denied.

Dr. Ortega: We have a precedent in this hearing about recalling people, so that's not true in the first day of the hearing. It's different now that I am presenting my defense.

Hearing Officer: No, you were put on notice fully and completely, Dr. Ortega, that these people would not be recalled. You choose to ignore that warning as you have many others. And therefore those people will not be recalled now. If you have other witnesses that have not testified in this matter, you may call them.

Dr. Ortega: Mr. Hearing Officer, one of the(ir) witnesses was recalled on that first day.

Hearing Officer: I don't care to argue it, Dr. Ortega. Do you have further witnesses you want to call or do you want the matter submitted.

Dr. Ortega: No, I don't want the matter submitted.

V:95/21 - 96/15 (a. 26): Is this fair?

(T)he Appellant in this matter, appearing in his own behalf, having

been previously duly sworn, assumed the stand and proceeded to further testify as follows:

Hearing Officer: You're reminded that you have been sworn before and that you're under oath, Dr. Ortega.

Mr. Rubin: Well, Mr. Hearing Officer, Dr. Ortega has already testified. (Fact: only cross-examined under protest.)

Hearing Officer: Well, he testified pursuant to my direction. He's entitled --

Dr. Ortega: I cannot be cross-examined any more because I have been cross-examined the --

Hearing Officer: Now, wait a minute, Dr. Ortega. You can be cross examined, and you're permitted to testify on your own behalf at this time. Now, this is not an appropriate time for argument. This is the time for facts.

Dr. Ortega: Right.

Hearing Officer: Arguments, I'm going to ask the parties if you wish to present any argument, to prepare the argument in writing and submit it to me. I will allow 15 days after the case is submitted for written argument.

So this is not a time for argument. This is a time for any facts that you wish to testify about.

V:110 - 111 (r. 31): Hearing denied:

> Mr. Waller found respondent's testifying in open court "a(n) intolerable burden, no question and answer format, which is the normal procedure for taking testimony for a hearing reporter, I'm going to give you an opportunity to put your testimony in writing, and then I'm going to take a look at it and Mr. Rubin can take a look at it, and then we'll reconvene for the purpose of cross-examination, if any." (What is the message, "if any"?)

V:110-111 (r. 32-33): No more hearing:

> Hearing Officer: . . . When I receive the testimony in writing, then I'll set an additional hearing date at which time we limit the hearing to Cross Examination, if any, and rebuttal testimony, if any.
>
> Dr. Ortega: And (re)rebuttal?
>
> Hearing Officer: Yes, but (re)-rebuttal is limited to what's presented on rebuttal. We're not re-opening this case.
>
> Witness: I understand that. I understand that.
>
> Mr. Rubin: Mr. Hearing Officer, Dr. Ortega --
>
> Hearing Officer: Perhaps we can handle this off the record.
>
> Mr. Rubin: Yes, sir.

Folio VI
(Hearing on Feb. 2, 1982)

VI:4-5 (r. 34): Collusion consummated:

"Well, I think what I'll do in order to be fair to both parties, or at least attempt to be fair with both parties is, we'll consider the testimony concluded; however, I'll hold the record open for another fifteen days and at that time you can submit all of the exhibits or any additional testimony that you want to present, Dr. Ortega. And I'll request that you give a copy of it to Mr. Rubin. At the end of fifteen days, I'm going to consider the record closed. At that time I'm going to prepare a proposed decision for the California State Personnel Board. The decision will be in writing; the decision will contain findings of fact; the decision will be mailed to all the parties; and it will be the decision of not just the Hearing Officer but it will be the decision of the California State Personnel Board. And under those circumstances, I'll consider the case submitted."

Folio VII

(a) ordered submitted on Dec. 29, 1981 for distribution before Feb. 16, 1982;

(b) incomplete testimony distributed on Feb. 2, 1981 with three pages missing;

(c) further submissions ordered without any further hearing or public sharing

VII:(14)047 (r. 15, 18): Another resident had complained of training as a volunteer (education should not depend on regular budget movements):

> ". . . Before I left on administrative leave, (Dr. O'Connor) told me that the investigation concerned coercion of contributors (to get training computer), and that the flap over the leave of absence (on which I had placed Dr. Vaughn until he resumed scheduled training rotation) was history.

[S.P.B. Rule 368 disallows docking in excess of 11 days in any 22-day span, and delay of rotation anticipated exceeds both. He reported to Highlind on Aug. 1, 1981.]

> "He also told me not to accept anymore residents without pay, which is against the official intent to encourage volunteerism at all levels of government. (In fact, Volunteer

Services had the only other computer in the hospital.)

". . . Even the investigator (Dr. Laskay), who was careful not to ask the (Apple) distributor about sub-purchase orders, is still ignorant about the basic facts of how computers work, namely that a printer (which Napa thought the Applewriter in the sub-purchase order was) without a computer is a seeing-eye dog without a master.

"His bias is so abysmal (or deep) he even asked the residents if I gave the newspaper the item about sexual harassment that has destroyed my reputation after the hearing (officer has) dropped one charge and left the others very much in doubt (after one day of hearing). He (Dr. Laskay) is not a very nice man."

VII:(21)137 (r. 18, 48): GOVERNMENT CODE: NEGLECTED OR VIOLATED

19302a. Appointing powers shall prepare performance reports and keep them on file as prescribed by board rule after discussing it. (Subpoena duces tecum for Napa personnel folders also denied.)

". . . THE INVESTIGATION WAS CARRIED OUT BY THE VERY PEOPLE ABOUT WHOM I HAD GRIEVIOUS COMPLAINTS."

VII:(25)173 (r. 36, 43, 48): Irony of sexual harassment charges:

". . . (The computer) facilitated the pulling together of material . . . that can be correlated during a two-week intensive orientation period.

"The correlations discovered that all men undergo a sex change operation before the recommended period for legal abortion is over. And so all . . . who are exiled from the womb before the first trimester are female . . .

". . . (R)esident who resented the implication of the endocrinological events inside the womb and the obstetrical intervention for safe abortions . . . came here on the recommendation of another alumni who was the first to come out of the closet. He had asked me if I liked homosexuals. And I said I liked lesbians best. (Because, as reproductive mammals, they were not flat-chested. One unappreciated sexual harassment complainant was. But only in public trials can that datum be processed without entering the record.)

"And so we have

"1) greed for money in an ex-felon plus

"2) resentment at being treated less than the best in an investigator (Dr. Laskay), whose sexual orientation is not a matter of choice but (as likely) a revolt (endocrine) against a sex change operation as a fetus and

"3) a computer whose purchase must not by-pass the bureaucrats who are threatened by redundancy because they cannot compete with computers (and)

"4) racism that makes what the hearing officer calls "limited" sexual harassment of Caucasian women, no matter how plain, by an Orientl a credible charge against a professional with unsullied reputation.

"If I had not just happened to make use of the computer's capacity for correlation at the wrong time, the resident who complained of being overwhelmed during July's orientation would not be the angriest but the least confused. . .

VII:225 (r. 58): Personal harrasment by homosexual alumnus:

"EVEN HOMOSEXUAL SECURITY AGENTS ARE NOT SUBJECTED TO SUCH HARASSMENT AS MY SUPPORTERS AND I HAVE BEEN, FOR BOTH SEXIST AND RACIST REASONS.

[SPB Rule 303 should have excluded all evidence of untimely sexual harassment, since it protects whomever is unfairly surprised for not having reasonable ground to anticipate whatever was thereafter offered.]

VII:(44)383-401 (a. 19): APPELLANT'S BURDEN OF DISPROOF:

A. "An excellent chief of professional education would:

"1) find it intolerable not to have a computer available for . . . residents who must cope with patients everyone has failed to help before they meet.

"4) not make patients compete for time with the computer against paper-hungry bureaucrats.

"8) not wait for approval in getting ready for the future under time pressures.

"13) support residents while uncertain if also weak, instead of demanding uniform compliance to a calendar of expectations.

". . . Any Chief of Professional Education WHO CANNOT MEET ABOVE STANDARDS SHOULD SIT BEHIND A DESK AND WAIT FOR PENNY-PINCHERS TO PASS THE BUCK.

VII:(44)387-9 (a. 19, 37): Who is truly more incompetent?

B. Levels of and responsibilities for incompetence:

"4) For an official (Dr. O'Connor) to (a) approve of exclusive use of data processing equipment for training and research and (b) agree

to buy accessories and then say (c) he's sorry, he did not know it has to be donated to be augmented, and (d) it needed to be cleared when applicable EDP policies exempt such purchases also (four-squarely) borders on incompetence. . .

6) And for a business manager (Mr. Friday) to boast of getting a computer but not know the first thing about it, confusing hardware with software, and a $2,000 item of equipment witha $75 worth of programmed diskette is more than incompetence, it is IGNORABISSIMUS.

7) And not to be able to read a shipping invoice to discover that the software was marked undelivered is incompetence even in a shipping clerk. BUT NOT TO BE ABLE TO DISTINGUISH BETWEEN A STOCK NUMBER AND A REGISTRATION NUMBER WILL NOT GET ONE EMPLOYED EVEN AS A STORE CLERK.

C. Inefficiency (small work output, excessive delays) assumes competency but should not:

"1) To take 12 weeks for 3 investigators hand-picked by the business manager to come up empty except with hearsay evidence . . . is inefficiency unmatched by armchair amateurs like me (who must investigate, charge, and defend). All I did was enter their statements into the computer and share it with those they investigated and ask for

their comments.

"2) And (for Mr. Friday, the business manager) not to investigate the equipment except for one glance at it while he was passing by in the hall, but to miss it the week after he finally persuaded his boss (forgetful Dr. O'Connor) that I had deceived him is self-deception or wish-fulfillment that is unworthy of a professional. (Or is that restraint of curiosity I insisted on when I interrupted his regular flirting with my secretaries? . . .

"3) For the executive director (Dr. O'Connor) not to know about feasibility studies when he is the only one who may order it in the case of exempt equipment (all under $75,000.00) is not efficient administration. It is dependent management which leaves one at the mercy of those who might not be dependable even if they are (more) knowledgeable. . . All it takes is . . . a few thoughtful questions whenevery you suspect that projection takes the place of performance. You should at least know what you don't know and ask, instead of assuming those who know will act. . . But in a bureaucracy, information is an instrument of barter. So one needs to be even more hard-nosed in inquiring.

"4) (For Dr. O'Connor) (t)o think of computers as no more necessary than "a sink or a screen", and not

entitled to more careful consideration is not to know how much time and temper can be saved by computers. . .

D. "INSUBORDINATION (mutinous, disrespectful coduct):

"I deal with sister hospitals directly, and with other hospitals here or out of state or out of the country, and nobody except our sister hospitals knows who our executive director (Dr. O'Connor) is. . .

"The only (other) time I wrote a letter for his signature was in reply to an inquiry by (acting) chief deputy director (Dr. Barter) of the department, pretending interest in our meeting new accreditation (training) requirements.

"I wrote a paragraph saying it was my policy to exceed all accreditation requirments, and we will succeed without a hitch if we get more computer power and replacements for old video equipment. He signed that (letter) because the inquiry was directed at him. (It probably opened the door to talking about electronic educational capabilities.) Could he have forgotten the implicit promise in that letter for more computer power? THE CHANCES ARE THAT HE CANNOT HONESTLY RECOLLECT WHAT HE SPECIFICALLY SIGNED!

"ONLY TWICE DID HE ASK ME TO DO SOMETHING, AND BOTH TIMES IT CONCERNED THE SAME PERSON (Dr. Laskay).

"a) The first time he asked it as a (personal) favor, to pay Dr. Laskay (a training stipend) from the start; and then he relented later, after hearing some unflattering things about Dr. Laskay. I reassured him Dr. Laskay's patients are well taken care of. (And so are Dr. Vaughn's, or neither would have continued as my supervisees.) . . .

"b) The second time was when he wanted me to go an administrative leave: He said I should not start residents without pay. He said HE SAID HE WAS AFRAID THE ATTORNEY GENERAL WOULD FIND IT ILLEGAL. He did not know there is a specific provision in the Governmert Code encouraging all agencies to accept volunteers.

"E. DISHONESTY (corruption, lying, cheating, stealing):

"1) IF the B.M. (Mr. Friday) knew that the printer costs more than the entire total of the sub-purchase orders, it is DISHONEST of him to mislead the C.E.O. (Dr. O'Connor) into believing that the subpurchase orders included a printer.

"2) And it is DISHONEST of respondents to present FALSE instruments as exhibits, not only

one but thrice: (a) an unsigned thank-you note to the donor of the printer, (b) and unsigned contract for the computer consultant, and (c) the first (computer consultant) contract, purported to be disapproved when it was not forwarded at all.

"ALL WERE FILE COPIES AND TWO (a and b) HAD SIGNATURES BY THOSE WHO NEED TO SIGN THEM.

"3) It is compounding DISHONESTY with DECEPTION (of the deputy attorney general) when it is alleged (on the basis of disinformation) that the hospital is more than just an agent when a contract has been approved by duly constituted authorities.

"NOT ONCE IN MY 17 YEARS HAS THE HOSPITAL DELAYED PROCESSING MY CONTRACTS NOR DELAYED COUNTER-SIGNING (RUBBER-STAMPED RECEIPT OF) APPROVAL BY DULY CONSTITUTED AUTHORITIES. . .

8) It is CORRUPT to confiscate my papers and select from them what weapons to use against me (to defend themselves). (a) And CORRUPT to threaten me with what friends entrusted to me personally, and use them to get at me without their permission. (b) And (CORRUPT) to try to suborn testimony by blackmail and proceed to blacken the personal reputation of a professional testifying to impersonal and professional

matters. (c) And (CORRUPT) to imply she is perjuring herself (to be consistent) with a ten-year-old Valentine Card.

"13) And it is LYING to claim that the computer consultant contract was held up because there had been no inventoried data processing equipment.

"14) And it is LYING to say that no purchases can be made without feasibility studies (of which one is ignorant) when the amount involved is under the maximum that is exempt (and there was a feasibility study on file).

"15) And it is LYING to allege that the consultant will have been overpaid because he is no expert when (after) he has been adjudged one and his contract has been approved by better experts than local pretenders.

"16) It is DISHONEST (of Dr. O'Connor) to send me on administrative leave secure in the belief that the investigation will not discover coercion of contributors because there had been none, and then announce that one had suspected deception even before the complaint of coercion came up.

"17) And it is (a) LYING to the residents to reassure them that nothing will change . . ., and when the (two-week) investigation came up

empty, (b) MISREPRESENTATION to say he (Dr. O'Connor) extended my leave to rest all rumors about me . . .

"18) And it is NOT HONEST (of Dr. O'Connor) not to offer that (a) we wanted what we bought for ourselves and (b) he promised support for training accessories to maintain accreditation and serve our patients better (which Dr. O'Connor never retracted).

"O) DISOBEDIENCE (violation of command or prohibition

"1) The B.M. (Mr. Friday) disobeys legislative intent when on two separate occasions he refused to transmit (to headquarters and to Dr. Ortega) the consultant contracts. . .

"3) (H)is team . . . disobeyed the C.E.O. if Dr. O'Connor honestly wanted to know the facts.

"P) EXPROPRIATION: misuse of another's property:

"2) It is misuse of state care (for Mr. Rubin, deputy attorney general) to recall an investigator back to the hospital from his home to claim four hours of overtime to deliver illegally a stamped envelope containing a blackmail threat.

"3) It is expropriation to demand the residents not use their own computer (even after they have

already been interviewed by the investigators).

"T. OTHER MISCONDUCT indisputably discrediting agency:

"1) It reflects on the hospital for its officials (a) to present . . . false instruments . . . as exhibits, (b) disrespectful of the hearing officer, (c) contemptuous of the State Personnel Board, (d) also illegal even if one is not under oath, and (e) probably worse that perjury which is easier to remedy.

"2) Further to sensationalize . . . by publicity releases when it is not the usual hospital practice also reflects on the hospital, and not to its credit.

"3) It is not creditable (literally and figuratively) for a hospital to demand residents give up personal holiday and vacation time to attend hearings that may decide their future.

"4) It is abuse of power under color of office to discourage right of peaceful assembly.

"5) It is abuse of power under color of office to deny owners the use of their property.

"6) It is abuse of power under color of office to withhold salary of faculty protesting against the bias of a witch hunter (Dr. Laskay),

alter his teaching schedule, and then offer duties not in his contract to make him depart from a program he helped build at the risk of disaccreditation by default.

"None of the above, (unlike the causes for dismissal under the same headings,) are make-weight, since they all form a pattern of performance. . . . Only because the pattern is undeniable does the motivation emerge as irresistible.

"If it takes 5 different individuals 67 specific separate or joint acts or omissions to allege and try 9 alleged against me, it is truly a mismatch, and it is the state and not my accusers I must confront.

"And it took only half as long as it took three investigators three months for me to discover and even to document them. If that makes me six times more efficient as an amateur, I am not surprised. But I am not being tried as an amateur investigator, but as Chief of Professional Education. (In that I have no peer in state service.)

VII:(44)440 (r. 56, a. 19): Evolution of baseless charges:

"We stopped to pick up my mail on our way back from vacation, and found my office locked up but not the computer.

"I thought they did change locks of

the offices because of theft. It soon turned out I was the one they didn't want inside my own office.

"I am allege(d) not to have followed proper donation procedures to obtain an inventory number for delivered equipment. I doubt that anyone even now knows for sure which procedures apply to equipment not intended for general hospital use but must be traceable in case of loss. . ."

(44)443 (r. 56): Was there reasonable cause to suspect?

[1) I dictated the thank-you notes.

[2) Their wording precludes hospital use of computer equipment.

[3) Dr. O'Connor tried to defend sub-purchase orders of accesories by repeating my justification that they are modular (interchangeable).

[4) He had thanked the contributors for obtaining a training computer.

[5) Without hospital inventory numbers, Mr. Friday can defer transmission of contracts.

[6) Having them finally processed and approved, better allege trespass when the computer is picked up over the week-end.

[7) Date administrative leave so

that it does not seem trespass.

[8) Repeat belief in hospital's ownership.

[9) But thank-you notes belie the belief.

[10) Allege forgery for donor whose signed letter may turn up missing.

[11) Better stick to the truth, that I dictated the letters.

[12) And the sub-purchase orders at the same time (to make the April 15 deadline).

[13) Deny the deadline.

[14) Claim short vacation was foreshortened by alleging deadline to sign.

[15) Not waiting is willful disobedience.

[16) The subpurchase order was copied from another list of equipment and shares one identical error.

[17) The list says some had already been delivered.

[18) Why have two disk drives and two monitors (deny overcrowding)?

[19) A computer can only use one printer at a time, why get an

Applewriter.

[20) Mr. Friday says it's a printer, and its his ignorance against the facts.

[21) Let's make his L.O.A memo less air-tight with notes of our own.

[22) Repeat what we noted in Notice of Separation.

[23) Find others who will complain about him.

[24) Another allegation was also outside statute of limitations, so let's add it and then amend later.

[24) Let's get two warm bodies before it is too late to amend.]

523 (37): SPB sustained dismissal now still being appealed:

"Will the State Personnel Board stand by and watch the rape of a career and the murder of a professional? OR sanctify it with a ritual sacrifice in the altar of a secular god whose name is State but begins with B for Big Bureau.

"OR refuse to bless an unholy marriage (between Napa and Davis)? AND choose to commend one grandfather for his progeny (including Dr. O'Connor)? . . .

NATURE OF CONTINUING CONTROVERSY

PRELIMINARY OBSERVATIONS/COMPARISONS

As in Reply ('R') to Petition for Writ of Certiorari ('C'), this integral but separable part of respondent's brief (RB) is appended (App.) to document refutation of (i) new allegations, both specified and non-specific, in current petitioners' brief (PB) and the amicus curiae brief for the U.S. (US), as well as (ii) less recent charges "noticed" in federal court by hearing counsel for NAPA before the State Personnel Board, and (iii) its own proposed findings as appended (without Notice of Punitive Action which it purportedly sustains) in the petition for writ of certiorari.

PAST, RECENT AND PRESENT CONTROVERSY

What is purported to be an investigative inventory allowed petitioners to treat respondent as a criminal, from whom their employees must be protected.

NATURE OF CONTINUING CONTROVERSY

The investigators were biased, peon dismissed before there were written charges, his protest and request for referral to Agency Secretary accepted as a formal appeal against dismissal, the hearing scheduled before formal appeal against written charges was received, key witnesses examined before discovery was complete, cross-examination and subpoenas denied after court ordered full discovery, peon cross-examined before he could present his witnesses, the decision to dismiss sustained before the proceedings had been reported, and the hearings transcribed out of chronological order, filled with prejudicial errors (e.g., pronoun changes) so that only careful reading, which discourages the casually interested, discovers the context and original content of the printed record.

NATURE OF CONTINUING CONTROVERSY

If NAPA had been a prison instead of a hospital, respondent's "house arrest" throughout his illegal administrative leave would be equivalent to an indeterminate isolation during the time he is held in administrative segregation as a suspect following an alleged offense, pending indictment. Like Hinckley's, but for different reasons, his papers will be impounded (commandeered without war or hot pursuit). His segregation for an indeterminate period of time, when his illegal administrative leave was extended indefinitely, and the manner in which the state conducted its investigation indicates that petitioners had committed itself to prosecute.

If petitioners elected to employ an adversary system -- instead of the established channels for resolving grievances provided by State Civil

Service (Ex. xiv) -- then all issues must be contested before a court of law. Justice would be defeated if judgments were to be founded on a partial or speculative presentation of facts.

> The need to develop all relevant facts in an adversary system is both fundamental and comprehensive. . . . The very integrity of the judicial system and public confidence in the system depend on a full disclosure of all the facts, within the framework of the rules of evidence. U.S. v. Nixon (1974) 418 U.S. 683, 709.

Some of the material discoverable during the S.P.B. hearings were withheld despite Stat Superior Court order (Ex. H) specifying that they be furnished. "Preliminary investigative notes" were then secretly submitted to federal district court, after it had already issued its summary judgment! They were claimed to be privileged. If State wants to be ultra-technical:

NATURE OF CONTINUING CONTROVERSY

In Shively v. Stewart (1966) 65 Cal 2d 475, 55 CR 217, the Supreme Court held that discovery rules applicable to criminal proceedings should be applicable to administrative proceedings.

Under the circumstances of this case, segregation of respondent was accusatory; it was a "public act" which was functionally equivalent to an arrest, though freed "on bail" for $11,128.95, a "public act" that seriously interfered with respondent's freedom to communicate and associate, disrupted his right to work, drained his financial resources, subjected him to public obloquy, and created anxiety in him and his friends, and triggered cardiac dysrhythmia in his wife (Exhibit LL).

SUPPLEMENTARY STATEMENT FOR THE BRIEF

There had been three major shifts of attorneys for petitioners. The first, Mr. Rubin, added the charge of coercion

to the original and amended notices of punitive action. He is now counsel for the State Personnel Board defending its decision in Superior Court, delaying resolution with continued requests for continuances and slow compliance with court order to produce the full administrative record. Hearing officer copied the charge from his brief and included it among his "findings" even if chief petitioner (Dr. O'Connor, II:103/21) and his appointed investigator (Dr. Laskay, III:9/12) both denied it under oath.

After (sic) summary judgment had been handed down, state counsel for petitioners secretly submitted excerpts for (1) the federal court judge to read of the investigative notes of the late Dr. Laskay, which the Chief Hearing Officer of State Personnel Board presiding over

the administrative proceedings persuaded him to withhold, in defiance of court-order (Exhibit H) to furnish them.

She also requested (2) petitioners' ex-counsel to make a declaration of the findings and proposed decision of the hearing officer and the resolution of the State Personnel Board to sustain respondent's dismissal, and (3) the federal court to take notice of its proceedings.

A. NEW CHARGE IN BRIEF FOR PETITIONERS

Without having taken notice of the proceedings before the full administrative record was finally submitted to State Court, the second attorney of record for a third shift of attorneys in this action added a new charge in petitioners' brief (PB 24, footnote 22) that respondent "improperly placed a resident physician under his supervision

on administrative leave". His complaint was only the pretext for banishing respondent, but can be taken up first.

Because this is a new charge, the relevant California Government Code Section (19574.5) was appended to PB, after rejecting its inclusion in the Joint Appendix, because the same was charged against petitioner from the beginning. Again, like the "female medical resident" of their petition, the name is withheld. The reference is to Dr. Richard Vaughn.

> Briefly, Dr. Vaughn complained because his month's leave of absence was extended by petitioners, unbeknownst to respondent, to six months, when he only wanted to delay resuming his rotation for a month. The interruption was due to "illness" and he had used up all his

sick leave. Petitioners wanted to place Dr. Vaughn on administrative leave for insubordination in delaying his return to his interrupted rotation but, though he had recovered from cardiac arrhythmia, he was still unsure of his ability to get back to the schedule that attacked his heart. He resumed that rotation at the time he and respondent had agreed he must return at the latest.

What Dr. Ortega ordered is routine LOA:

1) LOA under SPB rule 361a routinely protects residents from automatic dismissal after five days of unexcused absence from scheduled training rotation (see below; also Exhibit 21 in Appendix, and excerpts III:104, I:50, 52, 55, and IV:40);

2) no one can be docked more than 11 days

in 22 days under SPB Rule 368 and "(t)he appointing power SHALL not grant paid absences to break the continuity of a leave of absence without pay".

Rule 364. A leave of absence is terminated by a) expiration of the term thereof, b) sooner revocation by the appointing power with the approval of the executive officer, OR by the executive officer with the approval of appointing power, AND by receipt of the employee of written notice of such revocation AT LEAST 15 days prior to the effective date of the revocation; OR the sooner cancellation thereof by the employee WITH the approval of the appointing power. None happened here.

III:104: Counter-cross-examination:

Mr. Rubin: Dr. Ortega, is this the memorandum you sent Dorothy Owen?

A: Yes.

Q: Now, on that memorandum it indicates that Dr. Vaughn was going to be on leave, doesn't it?
A: Right.

Q: Does it say why he's going to be on leave.
A: No.

Q: But I believed you testified that in your memorandum you told the administration why you were placing Dr. Vaughn on leave.
A: No.

Q: Did you ever tell anybody in the Personnel Office why you were placing Dr. Vaughn on leave?
A: Because he wasn't going to Highland.

Q: Did you tell anyone that?
A: It's in there.

Q: The document indicates that Dr. Vaughn requests a delay of his next rotation and will be on leave of absence. Does it indicate that you were placing him on leave?
A: Yes.

Q: Where does it so indicate?
A: "He will be on leave of absence from July 1, 1981 until he reports to Highland. We will let you known when he reports there."

I:69 (a. 19): LOA not a surprise:

Dr. Ortega: . . . (Y)ou wanted to wait until August?

Dr. Vaughn: Right.

Q: And I placed you on one month's leave of absence?
A: Apparently you did.
Q: Did you know that if you had not reported to Highland for five consecutive days, you would have been automatically dismissed?

. . . .

Hearing Officer: Oh, that's pure speculation. I am well aware of a provision of law which is FREQUENTLY used for absence WITHOUT leave termed AUTOMATIC RESIGNATION (emphasis added). He may or may not have been aware, but let's get on to relevant issues concerning why he was denied 30 days.

[Above is the "independent hearing officer" counsel extols in footnote 22, PB 24, and in utter ignorance of the essential differences between Leaves of Absence and Administrative Leaves, thus adding another new charge besides "coercion" to the Notice of Punitive Action. Calling the hearing officer "independent" suffices for counsel to call judicial notice, once more, to the

findings of the State Personnel Board proceedings.]

Dr. Ortega: You wanted an elective in the same area?

A: Yes.
Q: After not completing it before?

S.P.B. Rules 361 and 368 differentiate LOA from administrative leave in the State Civil Service. Moreover, respondent was not acting in secrecy, nor inflicting damage by invading privacy or confiscating property rights to a career. Yet not only was there "finding" of (VII) secrecy, but also of (VI) "coercion" (see below), which was not even charged in the Notice of Punitive Action.

[What was somewhat hesitantly diagnosed above as "utter ignorance" (inadvertent error) on the part of counsel about what was ALLEGEDLY

improper in having a resident on leave of absence (LOA) is that he was NOT placed on administrative leave (AL). The tentative diagnosis may well change to "malicious misrepresentation" -- akin to earlier representation of the work-relatedness of seized souvenirs, now omitted from brief for petitioners -- because (1) such ignorance is not shared by petitioners and (2) "error" is deliberately compounded by the submission of the very same statutes objected to when first designated by respondent for joint inclusion in an appendix that saves time for the Court and space for argument:

[I:79/9: Personnel Officer offered AL:

> [Dorothy Owen: (Dr. Ortega) said he had not ordered Dr. Vaughn to work with Dr. M., that he had done this without his permission. I said you were aware that he was working there and you didn't tell me. And I said what you should have

done if you were to do punitive action, that he was, you know, being insubordinate, then it's not a leave of absence as requested by the employee.

[Dr. Vaughn was not insubordinate but a hard driver and slow learner. He got cardiac arrhythmia competing with younger interns in a general hospital in order to regain the medical license he lost on conviction for fraud. He received medical treatment and got better physically (as respondent himself verified in the tennis court) but had not regained enough confidence to pit himself professionally against younger doctors. He asked for a month's delay in his rotation (Exhibit 21), which was granted but was not to be subsidized, according to S.P.B. rules.

[Nor is this the first L.O.A. granted by respondent after an illness that exhausted sick leave

reserves, but never before to an ex-con still in the middle of his rehabilitation after conviction and long imprisonment for hustling (or "working energetically") for money. (He got credit but no financial reward in his first three months of training, when respondent accepted him as a "hospital volunteer" for a private hospital instead of a "medical resident" subsidized by the state).]

All older charges by others (B-D) are refuted (separately) in more detail further below, after counter-charges 1 to 3, and the latest bottom-of-the-barrel insinuation (E) from two experts without comparable experience will be dealt with last.

Does it ever undo what needs undoing merely to define precisely just what is

vexatious? Appended are documents of details of scope of violations of civil rights. Successive levels of omissions or transgressions are listed here with explanations added where necessary:

The first is at the hospital level (under SPB rules), the second at state level (under the State Civil Service Act of the State Constitution), the third at federal level (under the Bill of Rights, especially after the 1972 amendment of the California State Constitution by a privacy referendum), and the last at the earliest level of expectation under common law (as old defense of property and privacy merged with that of eroding human dignity in the evolution of civilization).

1. STATE PERSONNEL BOARD RULES BROKEN

By the time respondent was placed illegally on administrative leave, his

grievance against petitioner Friday, -- who headed the amateur team investigating suspicions of forgery of chief petitioner O'Connor's signature (below), -- was already three months old (r. 8). Access to Agency Secretary (Exx. N, xiv) was blocked (r. 21). The following S.P.B. Rules were violated, despite the spirit of the First Amendment that prompted their inclusion by the State Personnel Board under the mandate of Government Code Sec. 18714, in compliance with the State Civil Service Act of the California Constitution. Moreover, common law prohibition of investigation by those with vested interest (Mr. Friday and Dr. Laskay, r. 18) in the result was also disregarded.

SPB Rule 540. A grievance exists WHENEVER an employee believes that he/she has in any manner been adversely affected in employment by an action or failure of action by

the appointing power, a supervisor, or another employee.

540.2 PURPOSE AND OBJECTIVES . . . Every reasonable effort should be made INITIALLY by the employee concerned and the employee's immediate supervisor to resolve the grievance informally. If such efforts do not produce a solution, the objectives in following the more formal procedure are first to establish what the facts of the situation are and then to arrive at an appropriate solution under these facts rather than dealing in personalities . . . at as early a stage in the procedure as practicable, BY SOMEONE NOT INVOLVED IN THE IMMEDIATE SITUATION or direct line of supervision.

540.3 SCOPE . . . Employees SHOULD be encouraged to use the less formalized grievance procedure unless they (NOT THEIR SUPERVISORS) BELIEVE this procedure will not afford them adequate consideration of their grievance.

G.C. Sec. 18714(a) (r. 21): Nothing in this part SHALL preclude the board from providing by rule for a system of adjusting employee grievances which SHALL be administered WITHIN the departments before recourse to any remedy provided in this part (emphasis added).

G.C. 19303. Performance reports SHALL be considered in determining the advisability of dismissals.

2. PRIVACY VIOLATIONS STARTED/DEFENDED

Cf. II:100-102 (App62): Ilegal advice?

> Dr. Ortega: Did you authorize searching my personal papers.
> Dr. O'Connor: After we had consulted with the attorney in the department, we felt that we could, indeed, go into state property, which was your office, and look into the state property.

If private things cannot be secure, all measures to provide safeguards for their communication or disclosure are pointless, and the concept of privacy of human personality is an empty one.

> Bumper v. N. Carolina, 391 US 543, 1968: "Claims (of) authority to search . . . announces in effect that the('re's) no right to resist the search. The situation is instinct with coercion . . . Where there is coercion, there cannot be consent."

It was in this light that the Fifth Amendment became not just a guarantee against self-incrimination but against coercion: Justice Clark (himself once a

prosecutor) noted that when a confession is coerced, the Fifth and Fourteenth Amendment kept it out of federal and state courts, respectively. Didn't it make sense, then, to apply the same rule "to what is tantamount to coerced testimony by way of unconstitutional seizure of goods, papers, effects, documents, etc.?"

When given direct, literal application, the Fifth Amendment is not protection of privacy. Rather it is protection against coercion (in its varying degrees of brutality). It protects a fundamental concept of fairness: a person required to testify against himself would face a cruel trilemma: self-accusation if he tells the truth, perjury if he does not, and punishment for contempt if he refuses to answer. Even immunity does not dissolve Fifth

Amendment protection against coercive or deceptive intrusion into non-conspiratorial privacy.

Certain communications are privileged because their disclosure would result in an unjustified injury to privacy. The communication must originate in a confidence that disclosure will not be made. (Ex. 19, the seized book of poems, specified that it be opened in secret.) This element of confidence must be essential to maintaining a satisfactory relationship, which the community thinks ought to be protected, and injury to which would be greater than the benefit of disclosure. (Who gained what gains?)

Information gathering must not preempt the right to work. The right to examine the harvest and challenge its accuracy must be honored. And the sub-

ject must be informed of the distribution of information, especially if the distribution is designed to gather more.

White v. Davis, 1975, 13 C3d 757, 773, 120 CR 94, 104: Data-gathering activities must be "justified by a compelling state interest". (California Search and Seizure Practice, p. 10): "The right of privacy is the right to be left alone. It protects our thoughts, our emotions, our expressions, our personalities, our freedom of communion and our freedom to associate with the people we choose.

"Fundamental to our privacy is the ability to control circulation of personal information.

"The right of privacy is an important American heritage and essential to the fundamental rights guaranteed by the First, . . . Fourth, Fifth, and Ninth Amendments to the U.S. Constitution. This right should be abridged only when there is compelling public need.

"There should be no ambiguity whether our consitutional freedoms are for every man, woman and child in this state."

Sec. 1, Art. 1, California Constitution:

All people are by nature free and independent, and have certain

inalienable rights, among which are those of enjoying and defending life and liberty; acquiring, possessing, and protecting property; and pursuing and obtaining safety, happiness and privacy. (1972 Amendment by referendum.)

Any intrusion -- even the shining of a flashlight into a darkened interior of a car -- may be a search (People v. Bello, 1975, 45 CA 3d 770, 119 CR 838):

VII:(80)32: ". . . (T)he investigators looked for love letters to ruin my reputation, and hate letters to indict me. . .

"There were hate letters from rejected women and one from the resident I talked about . . . It was not because he was gay, but he worshipped me and was not accepted unconditionally (like one who is mentally ill. He saw me accept them and lay conditions down when it came to him. He has recently re-applied to resume residency here.)

". . . They say (now) they searched my papers because they belong to the state. Do my family's photographs belong to the state?"

[Above testimony, which is directly relevant to this action, was directed to be written by the hearing officer (r.

32) in the proceedings asked to be noticed in federal court.]

California courts have shown no inclination to depart from the federal interpretation of the self-incrimination prohibition (People v. Sudduth, 1966, 65 C2d 543, 546, 55 CR 393, 395), including but not limited to a breath test for alcohol.

Even before the exclusionary rule, "physical or psychological coercion to obtain incriminating statements or leads to incriminating evidence" were condemned as violations of due process of law.

The Privacy Act of 1974 provides that individuals be informed of (1) the authority of the solicitor of information, (2) whether it is mandatory or voluntary to inform the authority, (3) the principal purpose for which the information

is to be used, (4) its routine use, and (5) the effects of not providing it.

Cf. II:167 (App69): Who can search?

> Dr. Ortega: The witness testified that he was looking for forged documents.
>
> Hearing Officer Waller: If I were investigating this, I would be looking for forged documents AS WELL AS EVERYTHING ELSE THAT WENT ALONG WITH IT (emphasis added).
>
> Dr. Ortega: And my question is: When did he start looking for forged documents?
>
> Hearing Officer Waller: All right. You may answer the question.
>
> Dr. Laskay: There were two occasions on which this arose. The first one is when Dr. O'Connor himself did not originally recall signing anything other than the two sub-purchase orders. He later decided that that was his signature and he must have signed it at the same time that he signed those two sub-purchase orders.
>
> The second issue-
>
> Dr. Ortega: That's the first instance? He could not recall what he did that day?
>
> A: He recalls signing the two subpurchase orders. He does not specifically recall signing the thank-you letters.

Cf. II:112 (App73): Who misled whom?

Dr. Ortega: The question is: In all the time you knew me as Chief of Professional Education, have you been misled by me?

Dr. O'Connor: Only you know that.

III:7: Notes withheld during hearing:

Dr. Ortega: How many people did you talk to?

Dr. Laskay: Probably thirty-some people.

Q: And how many of them were reported to Dr. O'Connor?

A: The conversations with everybody that I had were reported to Dr. O'Connor.

Q: Thirty conversations?

A: That's correct.

Q: And they were written up?

A: We discussed this from my handwritten notes that I made either at the time of the interview or immediately after.

Q: Positive as well as negative statements?

A: Yes.

Q: And those are available if we subpoena those records?

Hearing Officer: Well, that's not an appropriate question.

Dr. Ortega: Okay.

Q: They are available?
A: I still have my records available.

G.C. 19851 (r. 28): Right to subpoenas:

> The board or its authorized representative SHALL issue subpenas for witnesses for the employee upon his written request and at his cost. The board or its authorized representative MAY request such costs to be prepaid. (None incurred.)

State Superior Court Order on November 2, 1981 granted discovery of all "investigative notes" (Ex. H), but when demanded of Dr. Laskay on November 16, 1981, hearing officer ruled (II:150, App69) that the court overstepped its bounds.

Hearing Officer also refused to issue any subpoenas for anything (records) or anyone (near or far), because of his tender feelings for confidants (II:151):.

> Dr. Ortega: Mr. Hearing Officer, the Government Code that makes this privileged information is what?
> Mr. Rubin: Well, Mr. Hearing Officer, I'm not going to do Dr. Ortega's research for him. He's free to look that up.

NATURE OF CONTINUING CONTROVERSY

[There was no such Government Code.]

G.C. Sec. 11507.6. After initiation of a proceeding . . . a respondent . . . is entitled to (f) investigative reports made by or on behalf of the agency pertaining to the subject matter of the proceeding, to the extent that such reports contain knowledge of the acts, omissions or event which are the basis for the proceeding, or (2) reflect matters perceived by the investigators in the course of his investigation -- (as asserted for Dr. Laskay's when submitted AFTER summary judgment in federal district court, having withheld it in defiance of Superior Court Order [H] to produce it) -- in the course of his investigation . . .

Hearing Officer Waller: You may proceed.

Mr. Rubin: Thank you.

Dr. Ortega: And, also, Mr. Hearing Officer, that was part of the petition to compel discovery, and these are statements that have been written, and part of those (that) have not been surrendered.

Hearing Officer: Well, you can talk to Mr. Rubin about them. He may, in fact, give you the notes. I don't know. But this witness is not going to testify about those notes. They are not important at this stage of the proceedings.

[Hearing Officer knew their relevance.]

III:20/24: Only Dr. Reynolds came forth:

Dr. Ortega: No(w), in your investigation, did you come up with anything then?
Dr. Laskay: At that time?

Q: Yes, when you questioned me.
A: I had had the discussion already with the one female resident. (II:7)

Q: And that was the only one you had?
A: At that time, that's correct.

Q: Right. What matters did you drop after that questioning?

. . .

Hearing Officer: I'm going ahead and excuse Dr. Laskay. I think he's testified long enough.
Is that the last witness you had?

Mr. Rubin: Yes. That concludes our case.
Hearing Officer Waller: Well, then, I'm going to suggest that you call Dr. Ortega as an adverse witness, under (Evidence Code) 776, so we can actually find out what the issues are in this case. Then we can go ahead and proceed in an orderly manner without groping for facts and statistics.

Mr. Rubin: I'll be pleased to do that, Your Honor.

[Under Evidence Code 776, counsel cannot

have the court thinking for him.]

Hearing Officer Waller: You'll be excused, Dr. Laskay.

Dr. Ortega: I do not want to do that. I should be permitted to present my own defense. If I have not testified, you cannot call me as an adverse witness.

[GC 11500. Admin. Adjudication, Dept. of Developmental Services:

[11513 (b). Each party shall have these rights: If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

[This is also the California State Attorney General's Opinion (No. 116, 1948):

[The basis for the difference between civil actions and administrative hearings is the Legislature believed that it was fairer for respondents to be given an opportunity to exercise their right to testify before being subjected to cross-examination. See also O'Mara v. State Board of Pharmacy (1966) 246 Cal.App.2d 8, 54 Cal.Rptr. 862.]

Hearing Officer: We're going to have you called as a witness, and we're going to identify what are the

real issues in this case. We have broad boundaries in the discretion in an administrative hearing.

Dr. Ortega: I don't think you have that discretion.

Hearing Officer Waller: I don't care to argue. You'll be called as a witness and sworn.

Dr. Laskay, you'll be excused.

[Dr. Laskay was murdered during the deposition of the investigators. His rudely interrupted cross-examination cannot now be resumed by court order.]

19582 (b) (r. 35): Decision not shared:

". . .A copy of the proposed decision shall be filed by the board as a public record and furnished to each party within 10 days after the proposed decision is filed with the board. . ."

If the State wanted to improve its Civil Service with "administrative inventories", then they should also guarantee compliance with its rules for administrative adjudication thereafter:

G. C. 18500: State Civil Service: It is the purpose of this part:

(a) To facilitate the operation of Article XXIV of the Constitution.

(b) To promote and increase economy and efficiency in the state service.

G.C. 18703: How to resolve conflicts:

The board shall provide for dismissals, demotions, suspensions , and other punitive action for and in the State civil service in accordance with Article XXIV of the Constitution and this part.

G.C. 18714: How to redress grievances:

(a) Nothing in this part shall preclude the board from providing for a system of adjusting employee grievances which shall be administered within the departments before recourse to any remedy provided in this part.

Provisions disregarded for Dr. Laskay:

Art. XXIV (Civil Service Act), Section 6:

a) No temporary appointment of a person to any position shall be made unless there is an employee list from which such a position can be filled. (There was such a list and Dr. Laskay was temporarily appointed while an equally eligible non-Caucasian was on vacation.)

b) No person shall hold a given position under temporary appointment for a longer period than 9 months in any consecutive 12 months, nor shall any person serve in the State Civil Service under temporary appointment

for longer than 9 months in any consecutive 12 months. (On Nov. 7, 1950, "eligible list" became "employment list", but not so used.)

Cf III:19: Dr. Laskay stayed too long.

Q: Your appointment in an acting capacity was at the pleasure of the Medical Director, is that right?
A: That's correct.

Q: And so you served without any civil service status?
A: That's correct.

Q: And you were serving in an acting capacity without going through the eligibility list?
A: That's correct.

It seems grossly unfair that the State can pay the illegally employed to look into a permanent employee's private medical files and personal correspondence, seize his souvenirs without permission or court order, but when a court orders that ANY notes taken of the investigation of respondent's entire life over the last ten years, they are denied, only to be submitted to another

court of the land to prove petitioners did not break the law five years before. Was it denied earlier because the state is only entitled to look into peon's professional life as an educator but could not stop looking?

3. PRIVACY AND DIGNITY ARE TRAMPLED

Continued from Brief for Respondent:

III:91: Ex. 17 was accepted as evidence!

> Mr. Rubin: Now, Dr. Sutton, I want to show you a valentine (card) dated February 14, 1972. Did you compose that valentine?
> A: Yes, I did.
>
> Q: Did you send it to Dr. Ortega?
> A: Yes.
>
> Q: All right. Now at the bottom of this - - it says, "I love you, Joyce." Is that correct?
> A: Yes. As I stated, at that time I had kind of a crush on Dr. Ortega.
>
> Q: Is that correct?
> A: Yes, at that time in 1972, almost ten years ago, I did, in fact, send that valentine.
>
> Q: Now, that's the question. .

. I'd like to introduce this as our next in order.

Dr. Ortega: Objection.

Hearing Officer: Overruled. It will be marked Exhibit 18 and admitted.

. . .

Mr. Rubin: Now, I want to show you a small volume of poetry entitled, "How Do I Love Thee?" And within it is a small note that says, "Open secretly. Merry Christmas, Joyce." Is that your note?

A. Yes, it is.

Q: And did you send this to Dr. Ortega?

A: Yes, that was December of 1972. This was, again, the same period of time. That is a standard book of poetry --

Q: Just a moment. I didn't ask you if it was a standard book of poetry. I just asked you if you sent it?

A: Yes.

Mr. Rubin: That's fine.

Dr. Ortega: Can I object to the exhibit, please?

[Thusly were a 10-year-old phothograph, a self-composed valentine of the same vintage, and a classic book of poems admitted as evidence for petitioners!]

Appendix-171
NATURE OF CONTINUING CONTROVERSY

It comes as no surprise that a taste for the ease with which tc ease out whomever does not shred all his papers is catching, and demands for more papers to inventory become urgent:

1) "Administrative inventories" achieve the covert purpose of any investigation to come up with charges, any charges at all.

2) The stolen information is a rich vein to mine for lode to satisfy the covert purpose of any prosecution to prove vague charges or come up with worse.

55 months after respondent was placed on administrative leave, a counter-charge (A) that he did same to an ex-con was added (PB 24, ftnt 22).

3) "Proposed Findings" must be shared to be verified, or else "student" will go down in history as "employee", etc.

NATURE OF CONTINUING CONTROVERSY

B. SPECIFIC LIST OF ALLEGED VIOLATIONS

After forty-four days of investigation while on extended administrative leave, respondent was charged with violations only of the following sub-paragraphs followed by fact-finding and governing laws and precedents that can clarify the nature of the controversy:

b) INCOMPETENCY (at what?)

> "Incompetency", as a ground for removal of a public officer, has reference to any physical, moral or intellectual quality, lack of which incapacitates officer to perform his duties, and criticism of a public official [petitioners Friday (privately to Dr. O'Connor, r. 8) and Donoviel (publicly at a hospital clinical executive meeting, Exhibit SS] does not constitute "incompetence". Laws, 1921, c. 669, Sec. 30. Sausbier v. Wheeler, 299 N.Y.S. 466, 473, 252 App.Div. 267.

III:122 (a. 29): NSH director fr 1964:

> Dr. Ortega: Did my department change during that time?
> Dr. Spratt: Yes, it grew considerably.

Q: While the hospital was

shrinking?

A: While the hospital was shrinking, and I will say that I always admired you for that, that you were able to maintain this residency program under the opposition of the Department of Mental Health in Sacramento.

In fact, as far as I know, you were the only one that maintained an accredited residency program in a State Hospital in California.

c) INEFFICIENCY (in what?)

G.C. Sec.14780 (r. 8): Re contracts:

"Every such contract shall be transmitted with all papers, estimates, and recommendations concerning it to the department and, if approved by the department, shall be effective from the date of such approval (July 15, in this case, yet the allegation was dated Sept. 14, 1981).

"Inefficient" means not producing effect intended or desired, incapable of, or indisposed to the effective performance of duties. Conley v. Board of Ed. of City of New Britain, 123 A.2d 747,751, 141 Conn. 488.

f) DISHONESTY (with whom?)

III:122 (a. 28): Now on hospital staff:

Dr. Ortega: In all the time you have known me, have I deceived

you?

Dr. Spratt: . . . You irritated me at times, but never deceived me.

"Dishonesty": ". . . a disposition to lie, cheat or defraud; untrustworthiness; lack of integrity." State ex rel. Neal v. State Civil Service Commission, 72 NE2d 69,71, 147 Ohio St. 430.

o) WILFUL DISOBEDIENCE (of whom?)

"Willfulness" is a wrongful act done intentionionally without just cause. McNamara v. St. Louis Transit Co., 81 S.W. 880,881, 182 Mo. 676, 66 L.R.A. 486, quoting U.S. v. Taylor, 2 Summ. 586, 28 Fed. Cas. p. 31.

"Rebellious", "mutinous" and "disobedient are synonyms of "insubordinate". State ex re. Richardson v. Board of Regents of Univ. of Nevada, Nev., 269 P2d 265,276.

G.C. Sec. 19572 (e): "Insubordination" within this section implies general course of mutinous, disrespectful or contumacious conduct. Neely v. CSPB (1965) 47 CR 64, 237 CA2d 487.

p) MISUSE OF (what?) STATE PROPERTY

"Misuse" is a simpler word than "abuse", but nearly synonymous with it. It signifies merely "to use amiss" (erroneously, Oxford Universal Dictionary).

"Property" in a broad sense is any valuable right or interest considered primarily as a source or element of wealth. Eric v. Walsh, 61 A.2d 1,4, 135 Conn. 85.

Cf. III:62 (App 82): Who owns computer?

Q: Now, to your knowledge, did that computer ever acquire a hospital number as part of the hospital's inventory of equipment?
A: No, never.

t) OTHER FAILURE (like which?) OF GOOD BEHAVIOR EITHER DURING (when?) OR OUTSIDE DUTY HOURS (where?) WHICH WAS OF SUCH A NATURE (in what respect?) THAT IT CAUSED DISCREDIT TO HIS AGENCY (according to whom) AND EMPLOYMENT (how?)

III:126 (a.37): Ex-director, now staff:

Dr. Ortega: Did I ever bring discredit to this hospital?
Dr. Spratt: Not that I am aware of.

Blake v. SPB (1977) 102 CR 50, 25 CA3d 541:

"A public employee may not be disciplined for what he does in his private life so long as such conduct does not impair the public service or cause discredit to his agency.

"The nature of the misbehavior and its effect on the public service

rather than the time or place of its occurrence are the determinative factors.

"Whatever the cause, the overriding consideration is whether the conduct harms the public service.

"A public employee may not be disciplined for what he does in his private life so long as such conduct does not impair the public service or cause discredit to his agency."

Failure of good behavior so as to come within province of this section authorizing punitive action when the failure is of such a nature that it causes discredit to officer's agency or his employment must be of such a nature that it reflects on officer's job and cannot be just any behavior which agency might consider improper. Orlandi v. SPB (1968) 69 CR 177, 263 CA2d 32.

C. FEDERAL COURT VERSION OF ABOVE LIST

The Notice of Punitive Action was further "amended" after (sic) the hearings to include the charge of coercion, in the brief submitted by hospital counsel, at the request of hearing officer, before transcribed testimony by both chief petitioner and his appointed

investigator (II:103/21 and III:9/12, respectively) denying such a charge were available, despite written testimony to the contrary by respondent (a. 20).

In the declaration of A. Rubin (counsel for petitioners during respondent's appeal against dismissal and now counsel for hearing officer in ex-peon's petition for writ of mandate in State Court) in support of summary judgment, he stated:

> 7. The decision of the Hearing Officer was issued March 8, 1982 (See Request for Judicial Notice); and the Hearing Officer upheld Dr. Ortega's dismissal on grounds of:
>
> (1) SEXUAL HARASSMENT

This was a brand-new cause for punitive action (including removal from position of authority, but not dismissal). On March 20, 1981, the State Personnel Board (Ex. 000) wrote all state agencies and asked each to "distribute a copy of